

SESSION LAWS
OF
HAWAII
PASSED BY THE
SIXTH STATE LEGISLATURE

REGULAR SESSION
1972

Convened on Wednesday, January 19
and
Adjourned Sine Die on Friday, April 14

Published by Authority of the
Revisor of Statutes
Honolulu, Hawaii

AUTHORITY

Section 2-4, Hawaii Revised Statutes, provides as follows:

Publishing of session laws. As soon as possible after the close of each session of the legislature, the revisor shall prepare for publication all laws duly enacted at such session, arranged in the order of their becoming law, together with a suitable index and tables showing what general statutes have been affected by such session laws.

PREFACE

This volume contains all the laws passed by the Legislature at the Regular Session of 1972.

In preparing this volume, the text of the original laws and proposals has been followed, with the exception of palpable typographical errors.

HIDEHIKO UYENOYAMA
Revisor of Statutes

Honolulu, Hawaii
September 25, 1972

STATE OF HAWAII
ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

UNITED STATES CONGRESS

Senate:

Hiram L. Fong
Daniel K. Inouye

House of Representatives:

Spark M. Matsunaga
Patsy T. Mink

STATE EXECUTIVE OFFICERS

Governor of Hawaii John A. Burns
Lieutenant Governor George R. Ariyoshi

**OFFICERS AND MEMBERS OF THE
SIXTH STATE LEGISLATURE
REGULAR SESSION**

1972

SENATE

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Vice President John T. Ushijima
Clerk Seichi Hirai

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Stanley I. Hara (D)
Richard Henderson (R)
John T. Ushijima (D)

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Henry Takitani (D)
Mamoru Yamasaki (D)

Third District—(Oahu)
D.G. Anderson (R)
John J. Hulten (D)
George H. Mills (R)

Fourth District—(Oahu)
Donald D.H. Ching (D)
Joseph T. Kuroda*(D)
Francis A. Wong (D)
Nadao Yoshinaga (D)

Fifth District—(Oahu)
Duke Kawasaki (D)
David C. McClung (D)
Robert S. Taira (D)
Sakae Takahashi (D)

Sixth District—(Oahu)
Mason Altiery (D)
Eureka B. Forbes (R)
Percy K. Mirikitani (R)
Wadsworth Y.H. Yee (R)

Seventh District—(Oahu)
Kenneth F. Brown (D)
Tennyson K.W. Lum (R)
Donald S. Nishimura (D)
Frederick W. Rohlfling (R)

Eighth District—(Kauai)
George H. Toyofuku (D)

D—Democrats 17
R—Republicans 8

*Elected at special election to fill the vacancy caused by the death of the Honorable Larry N. Kuriyama.

HOUSE OF REPRESENTATIVES

Speaker Tadao Beppu
 Vice Speaker Pedro P. de la Cruz
 Clerk George M. Takane

First District—(Hawaii)
 Jack K. Suwa (D)

Second District—(Hawaii)
 Wing Kong Chong (R)
 Stanley H. Roehrig (D)

Third District—(Hawaii)
 Joseph R. Garcia, Jr. (R)

Fourth District—(Hawaii)
 Yoshito Takamine (D)

Fifth District—(Hawaii)
 Minoru Inaba (D)

Sixth District—(Maui,
 Molokai, Lanai)
 Pedro P. de la Cruz (D)
 Ronald Y. Kondo (D)

Seventh District—(Maui)
 Harold L. Duponte (D)
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Eighth District—(Oahu)
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 W. Buddy Soares (R)

Ninth District—(Oahu)
 Frank C. Judd (R)
 Patricia Saiki (R)

Tenth District—(Oahu)
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Eleventh District—(Oahu)
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 John Leopold (R)
 Herman J. Wedemeyer (D)

Thirteenth District—(Oahu)
 Dorothy L. Devereux (R)
 Hiram L. Fong, Jr. (R)
 Charles T. Ushijima (D)

Fourteenth District—(Oahu)
 Clarence Y. Akizaki (D)
 Charles Y. Kaneshiro (D)

Fifteenth District—(Oahu)
 Robert Kimura (D)
 T.C. Yim (D)

Sixteenth District—(Oahu)
 Peter S. Iha (D)
 Richard S.H. Wong (D)

Seventeenth District—(Oahu)
 Richard Garcia (D)
 Kenneth K.L. Lee (D)

Eighteenth District—(Oahu)
 Akira Sakima (D)
 Ted Yap (D)

Nineteenth District—(Oahu)
 Mitsuo Uechi (D)
 James H. Wakatsuki (D)

Twentieth District—(Oahu)
 Daniel J. Kihano (D)
 Tatsuaki Kishinami (D)
 Patsy K. Young* (D)

Twenty-First District—(Oahu)
 James Aki (R)

Twenty-Second District—(Oahu)
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Twenty-Third District—(Oahu)
 Peter A. Aduja (R)
 Ralph K. Ajifu (R)
 Richard H. Wasai (D)

Twenty-Fourth District—(Oahu)
 Diana C. Hansen (R)
 John J. Medeiros (R)
 Andrew K. Poepoe (R)

Twenty-Fifth District—(Oahu)
 Richard A. Kawakami (D)
 Tony T. Kunimura (D)
 Dennis R. Yamada (R)

D—Democrats 34
 R—Republicans 17

*Appointed to fill the vacancy caused by the resignation of the Honorable Joseph T. Kuroda.

TABLE OF CONTENTS

	PAGE
List of Acts	viii
Text of Acts	1
Text of Proposed Constitutional Amendments	650
Tables Showing Effect of Acts:	
A. Sections of Hawaii Revised Statutes Affected	654
B. Session Laws of Hawaii Affected	660
C. Sections of Hawaiian Homes Commission Act 1920 Affected	660
D. Penal Code	661
E. State Constitution	661
General Index	662

LIST OF ACTS

SIXTH STATE LEGISLATURE

REGULAR SESSION OF 1972

ACT	BILL	SUBJECT	PAGE
1	H.B. 1639-72	Legislature, legislative auditor, ombudsman—appropriations	1
2	S.B. 1318-72	Age of majority, lowering of—conforming amendments	2
3	H.B. 1623	Workmen's compensation—enforcement of decisions	28
4	H.B. 490	Unemployment compensation—prompt payment	29
5	H.B. 1746-72	State accounting and finance—destruction of papers	29
6	H.B. 1747-72	State treasury—responsibility of finance director	30
7	H.B. 1912-72	Alterations of public buildings—exception from bid requirement	31
8	H.B. 1913-72	State bonds—interest rate	32
9	H.B. 20	Penal Code—adoption; conforming amendments	32
10	S.B. 310	Uniform Controlled Substances Act—adoption	142
11	S.B. 1014	Divorce or dissolution of marriage	165
12	H.B. 1748-72	State bonds—lost or stolen; defaced coupons	167
13	H.B. 434	Workmen's compensation—medical reports	169
14	H.B. 1778-72	Airports—flight schools	171
15	S.B. 1498-72	Wild birds—propagation	172
16	S.B. 1193	Horizontal property regimes—interests in common elements and land	173
17	S.B. 744	Uniform Partnership Act	174
18	H.B. 1895-72	Motor vehicles—inspection	188
19	S.B. 1413-72	Decedents' estates—administrators	188
20	S.B. 1429-72	Probate—small estates; allowance for spouse	189
21	S.B. 1430-72	Guardianship—termination upon marriage of minor	190
22	H.B. 1750-72	Retirement system—death of retirant	190
23	H.B. 1959-72	Retirement system—credit for certain federal system employees	192
24	H.B. 2500-72	Elevators—access to firemen	192
25	S.B. 770	Bicycles—registration; bikeways	193
26	S.B. 802	Public employment—personal history statements	195
27	S.B. 1344-72	Wages—service on jury or public board	195
28	S.B. 1355-72	Abandoned boats and vessels—disposition	195
29	S.B. 1547-72	Health department personnel—political activity	198
30	S.B. 1716-72	Firearms—dealers' licenses	198
31	S.B. 1822-72	Industrial loan companies—points	199
32	S.B. 241	Public assistance—claims against deceased recipient's estate	202
33	S.B. 308	Attorney general—investigations	203
34	H.B. 2439-72	University of Hawaii—higher education loan fund	203
35	H.B. 2179-72	Public employees health fund—benefits; foster child	204
36	H.B. 1749-72	Retirement system—interest; judges	206
37	H.B. 1774-72	Public lands—residence lots	209
38	H.B. 1775-72	Public lands—sales not subject to legislative approval	210
39	H.B. 1955-72	Agriculture—farm produce business	210
40	H.B. 1956-72	Milk control	213
41	H.B. 1988-72	Marketing inspection—revolving fund	217
42	H.B. 2255-72	Workmen's compensation—employer liability; special assessments	218
43	S.B. 1611-72	Nurses—examination proctoring fee	223
44	S.B. 1729-72	Public defender	224
45	S.B. 1806-72	Quality growth policy	226
46	H.B. 371	Civil defense and emergency—rules	227
47	H.B. 397	Additional unemployment compensation benefits	228
48	H.B. 867	Motor vehicles—dwelling use	231
49	H.B. 2222-72	Birds and mammals—conservation of indigenous species	232

ACT	BILL	SUBJECT	PAGE
50	H.B. 2279-72	Kamehameha Day celebration commission	235
51	S.B. 1060	Real estate brokers and salesmen—fraud and deceit	236
52	S.B. 1343-72	Wages—termination of employment	239
53	S.B. 1346-72	Manpower development and training—employment for welfare recipients	239
54	S.B. 1348-72	Workmen's compensation—volunteer fish and game wardens	241
55	S.B. 1365-72	Dentistry—license	242
56	S.B. 1367-72	Architects—license	242
57	S.B. 2014-72	Occupational safety and health law	245
58	S.B. 13	Pesticides—sale and use	256
59	S.B. 53	Interdepartmental transportation control commission	268
60	S.B. 124	Workmen's compensation—medical reports	269
61	S.B. 1061	Criminal injuries compensation—modification of program	270
62	S.B. 1368-72	Pharmacy—temporary license	273
63	S.B. 1415-72	Wages—discrimination between sexes	274
64	S.B. 1433-72	Apprenticeship—prohibition against discrimination	274
65	S.B. 1471-72	Drug abuse and alcohol—education and rehabilitation	275
66	S.B. 1518-72	Vital statistics—registration	276
67	S.B. 1577-72	Chicken eggs—inspection fee	278
68	S.B. 1694-72	Sand Island—park	279
69	S.B. 1719-72	Motor vehicles—forfeiture to county	279
70	S.B. 1749-72	Savings and loan associations—home loans	280
71	S.B. 1805-72	Organized crime—actions against and penalties	280
72	S.B. 1837-72	State budget—reports and summaries	287
73	S.B. 1844-72	Glazing materials—safety requirements	292
74	S.B. 1949-72	Appropriations—lapsing of funds	293
75	H.B. 498	Blind persons—rights and privileges	295
76	H.B. 819	Hawaiian home lands—loan funds	296
77	H.B. 1190	Elections—technical amendments	304
78	H.B. 1664-72	Real property tax—crop shelters	308
79	H.B. 1757-72	Real estate—out-of-state subdivisions	309
80	H.B. 1758-72	Mental health—outpatient clinic charges	309
81	H.B. 1814-72	Status of women commission—duties	310
82	H.B. 1878-72	Criminal injuries compensation—appropriations	311
83	H.B. 1922-72	Taxation—collection of unpaid taxes	315
84	H.B. 1969-72	Private personal property—acquisition for public use	318
85	H.B. 1980-72	Liens on personal property	319
86	H.B. 1991-72	Animal diseases control and quarantine—enforcement	320
87	H.B. 2012-72	Farm loans—new farmer program	321
88	H.B. 2040-72	Statutory revision—court administration, generally	325
89	H.B. 2041-72	Statutory revision—pleadings and procedure	338
90	H.B. 2042-72	Statutory revision—remedies	351
91	H.B. 2049-72	Statutory revision—land court proceedings	368
92	H.B. 2111-72	University of Hawaii—medical school	373
93	H.B. 2284-72	Investment securities—clearing corporations	374
94	H.B. 2336-72	Veterans—cemeteries	375
95	H.B. 2376-72	Intoxicating liquors—home manufacture of wine	376
96	H.B. 2383-72	Intoxicating liquors—license transfer restriction	377
97	H.B. 2436-72	Forest reservations—surrender of private land	378
98	H.B. 2511-72	Banks—loans to personnel	379
99	H.B. 2517-72	Social services—work incentive program units	380
100	S.B. 1382-72	Environmental quality—comprehensive act	381
101	S.B. 1972-72	Public employment—health fund contributions	393
102	H.B. 1650-72	Penal Code—theft	396
103	H.B. 1881-72	Agricultural cooperative associations	397
104	H.B. 2043-72	Statutory revision—evidence	402

ACT	BILL	SUBJECT	PAGE
105	H.B. 2045-72	Statutory revision—limitation of actions	408
106	H.B. 2051-72	Statutory revision—liens	410
107	H.B. 2052-72	Statutory revision—property proceedings	412
108	H.B. 2053-72	Statutory revision—decedents' estates	414
109	H.B. 2058-72	Statutory revision—criminal procedure	416
110	H.B. 2524-72	Public lands—acquisition for agricultural purposes	418
111	S.B. 452	Securities—exemption from registration; industrial loan company investment certificate	419
112	S.B. 967	Game mammals—hunting restrictions	420
113	S.B. 1823-72	Industrial loan companies—investment certificates and debentures	421
114	H.B. 290	Uniform Controlled Substances Act—amendments	423
115	H.B. 1680-72	Divorce—child custody; social study	427
116	H.B. 1952-72	Bicycle tax	428
117	H.B. 2161-72	University of Hawaii—Hilo; appropriation	429
118	S.B. 476	Public utilities commission—compensation; staff attorney	430
119	S.B. 1035	Banks—merger; cash or property distribution	431
120	S.B. 1340-72	Temporary disability insurance—denial of benefits	432
121	S.B. 1341-72	Wages—medical deductions prohibited	433
122	S.B. 1342-72	Wages—tips and gratuities	434
123	S.B. 1612-72	Optometry—continuing education	435
124	S.B. 1878-72	Elevator mechanics—licensing	436
125	H.B. 2050-72	Statutory revision—recording of documents	437
126	H.B. 1658-72	Governor—transition of office	438
127	H.B. 2194-72	Industrial loan companies; banks—loan period	441
128	H.B. 2208-72	Education—after school and weekend community activities	441
129	S.B. 174	Retirement system—prior service repurchase	442
130	S.B. 1988-72	Model cities study	443
131	H.B. 1043	International Marine Exposition	445
132	S.B. 1502-72	Residential landlord-tenant code	446
133	S.B. 1580-72	Limitation of actions—damages by contractors	464
134	S.B. 1649-72	Pest control operators—licensing	465
135	H.B. 348	Housing—rent supplements	474
136	H.B. 620	Harbors—rates	475
137	H.B. 1645-72	Motor vehicles—mass merchandising of insurance	476
138	H.B. 1656-72	Revised Uniform Estate Tax Apportionment Act	480
139	H.B. 1721-72	Veterans—free copies of documents	484
140	H.B. 1752-72	Insurance—unfair claim settlement practices	484
141	H.B. 1759-72	Psychiatric facilities—authorized absence	485
142	H.B. 1838-72	District courts—landlord-tenant disagreement	485
143	H.B. 2044-72	Statutory revision—depositions and discovery	487
144	H.B. 2048-72	Statutory revision—tort actions	489
145	H.B. 2054-72	Statutory revision—guardianship and trusts	491
146	H.B. 2200-72	University of Hawaii—certain capital improvements projects	493
147	H.B. 2330-72	Chicken eggs—quality	496
148	H.B. 2377-72	Criminal law—appeals by State	497
149	H.B. 2382-72	Intoxicating liquors—licenses; change without public hearing	497
150	H.B. 2449-72	Uniform securities act—exemption transactions; rental management contract	498
151	S.B. 46	Food, Drug and Cosmetic Act—conforming amendments	499
152	S.B. 95	Correctional industries—wages	516
153	S.B. 96	Prisoners—compensation	517
154	S.B. 565	Intoxicating liquors—sale of wine	518
155	S.B. 881	Agricultural marketing agreements—state program	518
156	S.B. 1177	Telecommunications—devices to fraudulently obtain services	532
157	S.B. 1345-72	Employment security—referees	533
158	S.B. 1560-72	Elections—physically disabled voter	534

ACT	BILL	SUBJECT	PAGE
159	S.B. 1720-72	Motor vehicles—certificates of registration	535
160	S.B. 1737-72	Secondary school students conference	536
161	S.B. 1863-72	Motor vehicles—highway beautification and disposal of abandoned vehicles revolving fund	537
162	S.B. 2068-72	Status of women commission—membership	538
163	H.B. 54	Standards of conduct—state legislators and employees	539
164	H.B. 2047-72	Statutory revision—actions by and against the State	548
165	H.B. 2110-72	University of Hawaii—law school	550
166	H.B. 2509-72	Firearms—exemption from registration	551
167	S.B. 466	Physicians and surgeons—residence requirement	551
168	S.B. 1436-72	Legislative scientific advisory committee	553
169	S.B. 1819-72	College and university student leaders conference	554
170	S.B. 1919-72	Housing projects—technical amendments	555
171	S.B. 1970-72	Legislative reference bureau—revisor of statutes	560
172	S.B. 1983-72	Tax collections—distribution to counties	564
173	H.B. 42	Public lands and Hawaiian home lands—subleases	566
174	H.B. 356	Corrections—money of prisoners	567
175	H.B. 440	Public lands—exchanges	567
176	H.B. 1638-72	General Improvements Act of 1972	568
177	S.B. 919	Intoxicating liquors—general amendments	593
178	S.B. 2013-72	Housing projects—exemption from zoning and construction codes	597
179	H.B. 1672-72	University of Hawaii—new programs for adults	598
180	H.B. 1780-72	Boating special fund—establishment and administration	599
181	H.B. 1804-72	Professional medical corporations—stockholders	601
182	H.B. 1828-72	Marriage—place of ceremony	601
183	H.B. 1987-72	Farm loan program—appropriation	602
184	H.B. 2046-72	Statutory revision—attorneys; practice of law	603
185	H.B. 2144-72	Forestry and water reserve zones—utility and other permitted uses	604
186	H.B. 2190-72	Limitation of actions—counterclaims; third party defendants	605
187	H.B. 2249-72	Land use law—district boundary change	606
188	H.B. 2571-72	Public hearings—legal notice	607
189	S.B. 1411-72	Tort liability—spouses	608
190	S.B. 1419-72	District courts—practitioner without license	608
191	S.B. 1422-72	Tort liability—husband	609
192	S.B. 1424-72	Marriage—age requirements; minors	609
193	S.B. 1435-72	Studies—central repository	610
194	S.B. 1472-72	Attachment—property exemption	611
195	S.B. 1593-72	Motor vehicle industry licensing—price restrictions	612
196	S.B. 2008-72	Electricians and plumbers—licensing	612
197	H.B. 2522-72	North Kohala development	613
198	S.B. 1650-72	Aged persons—day care centers	614
199	S.B. 1588-72	Public broadcasting authority	615
200	H.B. 1893-72	Real property tax—exemptions	619
201	S.B. 288	County improvement districts—state highways	622
202	H.B. 1636-72	Supplemental Appropriations Act of 1972	624
203	H.B. 1879-72	Claims against the State—appropriations	643
204	H.B. 2515-72	Waikiki—general improvements	646
205	S.B. 564	Newspapers—antitrust exemption	647
	S.B. 1408-72	Equality of rights—constitutional amendment	650
	S.B. 1947-72	Supplemental appropriation bill—constitutional amendment	650

Session Laws of Hawaii
Passed By The
Sixth State Legislature
Regular Session
1972

ACT 1

H. B. NO. 1639-72

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, and the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is hereby appropriated from the general funds of the State the sum of \$769,184, or so much thereof as may be necessary, for defraying the pre-session, interim session and other expenses of the Senate for the Regular Session of 1972, Sixth State Legislature of the State of Hawaii, and for the period up to and including January 16, 1973.

SECTION 2. There is hereby appropriated from the general funds of the State the sum of \$995,000, or so much thereof as may be necessary, for defraying the pre-session, interim session and other expenses of the House of Representatives for the Regular Session of 1972, Sixth State Legislature of the State of Hawaii, and for the period up to and including January 16, 1973.

SECTION 3. Any unencumbered balances of the appropriations provided for in sections 1 and 2 remaining at the close of the Regular Session of 1972 are hereby appropriated to defray any and all expenses of the Senate and the House of Representatives, respectively, including but without limitation to the generality of the foregoing, the expenses of any committee or committees established by either the Senate or the House of Representatives and the pre-session expenses of the Regular Session of 1973, Seventh State Legislature of the State of Hawaii. Payment of such expenses of the Senate shall be made only with the approval of the President of the Senate, and payment of such expenses of the House of Representatives shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 17, 1973, the Senate and the House of Representatives shall have their accounts audited and a full report of such audit shall be presented to the Senate and to the House of Representatives of the Legislature convening on January 17, 1973.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provision of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until otherwise prescribed by law, the expenses of such

ACT 2

member shall be \$45 per day and authorized by the President of the Senate or the Speaker of the House of Representatives, respectively.

SECTION 6. There is hereby appropriated from the general funds of the State the sum of \$192,573, or so much thereof as may be necessary, to the office of the ombudsman for defraying the expenses of the office during the fiscal year 1972-73.

SECTION 7. There is hereby appropriated from the general funds of the State the sum of \$1,596,906 to the office of the legislative auditor for the following expenses: (a) the sum of \$691,906, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor for the fiscal year 1972-73; (b) the sum of \$70,000 (4.0), or so much thereof as may be necessary, for defraying the expenses of the office of the state ethics commission during the fiscal year 1972-73; (c) the sum of \$150,000, or so much thereof as may be necessary, to be expended upon approval of this Act, for the purpose of performing special studies, improving capabilities for planning, programming and budgeting, and fulfilling other special requests made of the legislative auditor by the legislature or jointly by the President of the Senate and the Speaker of the House; (d) the sum of \$685,000, or so much thereof as may be necessary, to be expended during the fiscal year 1972-73, for interim legislative studies, for contractual services for such studies, for training and other operating expenses to continue the development of the legislature's planning, programming and budgeting capabilities, for equipment relating to computer systems programming and operations for the purpose of improving the efficiency of legislative operations including, but not limited to, bill drafting, statutory and information retrieval, status of legislative actions, and reproductions of legislative material and for such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives, or of the Senate and the House of Representatives through the President of the Senate and the Speaker of the House of Representatives.

SECTION 8. Each section of this Act is hereby declared to be severable from the remainder of this Act.

SECTION 9. This Act shall take effect upon its approval.

(Approved January 31, 1972.)

ACT 2

S. B. NO. 1318-72

A Bill for an Act Relating to Lowering the Age of Majority and Conforming Amendments to the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 577-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 577-1 Age of majority. All persons, whether male or female, residing in the State, who have attained the age of eighteen years, shall be regarded as of legal age and their period of minority to have ceased."

SECTION 2. Chapter 52, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 52-40 to read as follows:

“Sec. 52-40 Service on chief of police. When the chief of police is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the chief of police to execute, shall be executed by any police officer; provided, when an action is begun against the chief of police, all process and orders may be served by any person, a citizen of the United States, of the age of eighteen years, appointed by the court or judge for that purpose.”

2. By amending section 52-72 to read as follows:

“Sec. 52-72 Serving process against chief of police. When the chief of police is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the chief of police to execute, shall be executed by any police officer; provided, when an action is begun against the chief of police, all process and orders may be served by any person, a citizen of the United States, over the age of eighteen years, appointed by the court or judge for that purpose.”

SECTION 3. Chapter 134, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 134-3 to read as follows:

“Sec. 134-3 Permits to acquire; registration; penalty. No person shall acquire the ownership of a firearm of any description (other than a rifle or shotgun having a barrel length of eighteen inches or over), whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight or otherwise, until he has first procured from the chief of police of the county of his place of business, or if there be no place of business, his residence, or if there be neither place of business nor residence, his place of sojourn, a permit to acquire as prescribed herein; provided, when title to any such firearm is acquired by inheritance or bequest, the foregoing permit shall be obtained before taking possession of same. Further, no person shall keep in his possession any such firearm which is owned by another, irrespective of whether or not the owner has consented to its possession, without a permit from the chief of police of the aforesaid county; provided, that any pistol or revolver, which is registered under, and in respect of which the owner has fully complied with, this chapter, may be loaned to another even though he be a minor, upon a target range, for a period not longer than to allow the other person to then and there use it for target shooting, without a permit.

Each chief of police may issue permits, within his jurisdiction, to acquire such firearms, to citizens of the United States, of the age of eighteen years or more, and to duly accredited official representatives of foreign nations. Each chief of police may also issue permits to aliens of the age of eighteen years

ACT 2

or more for use of rifles and shotguns for a period not exceeding sixty days, after the alien had first procured a hunting license under sections 191-1 to 191-6.

Applications for the permits shall be signed by the applicant upon forms to be specified by the department of the attorney general and shall be signed by issuing authority. One copy of the permit shall be retained by the issuing authority, as a permanent official record. The permit shall be void unless used within ten days after the date of issue. In all cases where possession is acquired from another person in the State the permit shall be signed in ink by the holder thereof and shall be delivered to and taken up by the person who is transferring title to the firearm, who shall make entry thereon setting forth in the space provided, the name of the person to whom the firearm was transferred, and the make, style, caliber, and number as applicable. He shall then sign it in ink and cause it to be delivered or sent by registered mail to the issuing authority within forty-eight hours. In case receipt of the firearm is had by mail, express, freight or otherwise, from sources without the State, the person to whom the permit has been issued shall make the prescribed entries thereon, sign it in ink, and cause it to be delivered, or sent by registered mail to the issuing authority within forty-eight hours after taking possession of the firearm. No person shall sell, give, loan, or deliver into the possession of another any firearm or ammunition except in accordance with this section.

Any person acquiring a firearm under this section shall, within five days of acquisition, register it in the manner prescribed by section 134-2.

No fee shall be charged for permits under this section.

Any person who violates this section shall be fined not more than \$500 or imprisoned not more than one year, or both."

2. By amending section 134-4 to read as follows:

"Sec. 134-4 Transfer of rifles and shotguns. No transfer of any rifle or shotgun having a barrel length of eighteen inches or over, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, shall be made in any event to any person under the age of eighteen years, and no person under the age of eighteen years shall possess any such rifle or shotgun, except as provided by section 134-5.

It shall be unlawful for any person to own or possess such rifle, unless he is a citizen of the United States, or an alien who has procured a hunting license under sections 191-1 to 191-6 and a firearms permit under section 134-3.

Any person who violates this section shall be fined not more than \$500 or imprisoned not more than one year, or both."

SECTION 4. Section 206-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Land disposed of by the board. To be eligible to purchase or lease a residence lot from the board, the buyer shall furnish satisfactory evidence to the board, under oath, and otherwise as required by the board, that he:

(1) Is a citizen of the United States or a declarant alien who has re-

sided in the State for a period of five years or more;

- (2) Is at least eighteen years of age;
- (3) Is a bonafide resident of the State and has a bona fide intent to reside in the development area concerned, if successful in purchasing or leasing a lot in the area under this chapter; and
- (4) Has a gross income sufficient to meet the cost of the land being disposed of by the board. The board shall develop policies whereby those most deserving of housing shall be given preference. In developing the policies, the board shall consider the applicant's household income, the number of dependents, and such other factors as the board may deem pertinent.

Any person whom the board finds to be within one of the following classes, shall not be eligible to become an original purchaser or lessee of a residence lot, to wit:

- (A) A person who himself or whose husband or wife or both (when husband and wife are living together) owns or own in fee simple lands suitable for residential purposes within the political subdivision and in or reasonably near the place of residence or place of business of the person; and
- (B) A person who himself or whose husband or wife (when husband and wife are living together) has pending an unrefused application to purchase a lot in a development area under this chapter from the board.

Any person, firm, association, or corporation may purchase business lots within a development project for business necessary to service the project. The lots shall be sold at public auction to the highest bidder for cash.

The board shall require all applicants for the purchase or lease of residence lots to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this chapter by the board shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the board in connection with any application shall constitute perjury and be punishable as such.

When a development project or projects has or have been sufficiently completed to be suitable for disposition to individual purchasers or lessees, the board shall sell or lease the lots therein to eligible purchasers or lessees and shall give notice of the disposition by publication in at least two newspapers of general circulation on the island of Oahu. The notice shall state in general terms the size, location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the first publication of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons. No more than one lot shall be sold or leased to each applicant.

The purchaser at his option may pay the purchase price in full on delivery of a deed or pay not less than ten per cent of the purchase price and execute with the board an agreement of sale under the terms of which the unpaid balance is to be paid in monthly installments and over such period as the board determines, with interest on unpaid balances at a rate not to exceed six and one-half per cent, payable monthly, deed to be delivered on final payment; provided, that not less than one-half of one per cent on account of principal shall be required by the agreement to be paid each month. Taxes shall be prorated as of the date of delivery of deed in the case of a cash sale and as of the date of execution of the agreement of sale in the case of a sale in other cases. Each agreement of sale shall provide that the whole or any part of the unpaid balance of the purchase price plus accrued interests may be paid at any time."

SECTION 5. Section 281-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-1 Definitions. Whenever used in this chapter, unless otherwise apparent from the context:

"Addicted to the excessive use of intoxicating liquor" refers to one who has acquired the habit of using intoxicating liquor excessively to deprive himself of reasonable self-control, a common drunkard, or a habitual drunkard.

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but not denatured or other alcohol which is considered nonpotable under the customs laws of the United States.

"Beer" means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley or other grain, malt, and hops in water.

"Commission" means the liquor commission for the county within which such commission has jurisdiction under this chapter.

"Club" means any organization for objects of a social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain, having a regular membership to all of whom is charged monthly or quarterly dues, employing a full-time steward, and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. "Club" also means the establishment so operated and the premises thereof; provided, the word "club" shall not apply to any organization not in existence for at least one year prior to its application for a license.

"County" means the county in respect of which each commission has jurisdiction under this chapter; provided that in the county of Kalawao liquor may be sold only by such persons and only under such conditions as may be permitted or prescribed from time to time by the department of health.

"Elected executive head" includes the chairman of the board of supervisors of each county and the mayor of the city and county of Honolulu and any duly appointed or elected successor to the officers.

"Gross sales" means the total receipts actually received from the sale of liquor for which the license has been issued without deduction on account of the cost of property sold or expenses of any kind.

“Inspector” means any inspector of the commission in each case for the county wherein the commission has jurisdiction.

“License” means any license granted under this chapter.

“Licensee” includes also all agents, servants, and employees of the holder of a license.

“Liquor” or “intoxicating liquor” includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

“Minor” means any person below the age of eighteen years.

“Original package” means a package or container as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale.

“Person” means and includes natural persons, associations, copartnerships, and corporations, and also includes any agent, servant, and employee of such person.

“Premises” or “licensed premises” means the premises in respect of which a license has been or is proposed to be issued.

“Public place” means any place, building, or passenger conveyance to which the public resort or are generally permitted to have access.

“Regulation” means any regulation prescribed by the commission with the approval of the elected executive head of the county for carrying out this chapter.

“Sell” or “to sell” includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the word “sale” includes every act of selling as herein defined. Notwithstanding the provisions above, the delivery of liquor by a licensee’s vehicle or the vehicle of a licensee’s agent shall be deemed delivery for value.

“Seller” includes the agents and employees of a seller; provided that any person shall be deemed to be a seller, who in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of or takes, receives, or forwards orders for liquor to be shipped into the State from any place without the State to be delivered to customers, by direct shipment or otherwise.

“Under the influence of liquor” means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry his normal mental faculties or ability to care for himself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of himself which he would otherwise normally possess.

“Wine” means any wine coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919), and includes sake.

“Written” or “writing” includes printing and typewriting.”

SECTION 6. Chapter 286, Hawaii Revised Statutes, is amended in the following respects:

1. By amending subsection 286-102(c) to read as follows:

“(c) No person under the age of eighteen years shall be issued a license to operate or shall operate any motor vehicle which is used in the transport of persons for compensation or any bus or any motor vehicle used as a bus.”

2. By amending section 286-105 to read as follows:

“Sec. 286-105 What persons are exempt from license. The following persons are exempt from license:

- (1) Any person while driving or operating a motor vehicle in the service or employ of any branch or agency of the federal government; provided he has received from such branch or agency a license or permit to so operate and drive the motor vehicle; and provided such branch or agency has been duly authorized by the federal government to issue license or permit;
- (2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway; provided that no person under the age of thirteen years shall be permitted to drive or operate any such road machine, farm tractor, or implement of husbandry on a highway;
- (3) Any nonresident who is at least eighteen years of age who has in his possession a valid driver's license issued to him in his home state or in the Dominion of Canada may, if his home state or province is a party to the Driver License Compact, operate any category of motor vehicle for which the license is valid.

Any other nonresident who is at least eighteen years of age who has in his possession a valid driver's license issued to him in his home state or the Dominion of Canada may, for a period of not more than ninety days, operate any category of motor vehicle for which the license is valid.”

3. By amending subsections 286-112(a) and (b) to read as follows:

“(a) The application of any person under the age of eighteen years for an instruction permit or operator's license shall be signed and verified before a person authorized to administer oaths by both the father and mother of the applicant, if both are living and have custody of him, or in the event that neither parent is living then by the person or guardian having such custody or by an employer of the minor, or in the event that there is no guardian or employer then by any responsible person who is willing to assume the obligation imposed under this part upon a person signing the application of a minor.

(b) Any negligence or misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for any

damages caused by such negligence or misconduct except as otherwise provided in the next succeeding paragraph.”

SECTION 7. Section 302-4, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 302-4 Qualifications for licensing.** In addition to other requirements of licensing, no license shall be issued to any person unless he meets the following:

- (1) That he is eighteen years of age or older.
- (2) That he is of good moral character and has a good reputation for honesty, truthfulness, and fair dealing.
- (3) That he has been authorized to represent a private school or a private correspondence school which is licensed by the proper officials in the State where the private school or correspondence school is located. The licensing does not accredit courses offered as valid for transfer to any other school or college in Hawaii.
- (4) That the department of education review and approve the contract the school proposes to use in enrolling students from Hawaii.”

SECTION 8. Chapter 304, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 304-55 to read as follows:

“**Sec. 304-55 Courses of instruction.** Chapter 281, or any other law to the contrary notwithstanding, the University of Hawaii may offer and conduct courses of instruction in food and beverage control, club management, and classical food and beverage management, which include wine tasting, through any campus of the university including the community colleges; and shall admit qualified students to such courses even if the students are below the age of eighteen.”

2. By amending section 304-94 to read as follows:

“**Sec. 304-94 Capacity of minors.** Any student otherwise qualifying for a loan under this program shall not be disqualified by reasons of his being under the age of eighteen years, and for the purpose of applying for, receiving, and repaying the loan, any such person shall be deemed to have full legal capacity to act and shall have all rights, powers, privileges and obligations of an adult with respect thereto.”

SECTION 9. Section 309-3, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 309-3 Capacity of minors.** Any student otherwise qualifying for loan under the provisions of this chapter shall not be disqualified by reasons of his being under the age of eighteen years, and for the purpose of applying for, receiving and repaying such loan, any such person shall be deemed to have full legal capacity to act and shall have all rights, powers, privileges, and obligations of an adult, with respect thereto.”

SECTION 10. Chapter 328, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 328-82 to read as follows:

“Sec. 328-82 Prohibited acts, generally. The following acts and the causing thereof are prohibited:

- (1) The manufacture, compounding, processing, or importation of a drug in violation of section 328-86(a);
- (2) The sale, delivery, or other disposition of a drug in violation of section 328-86(b);
- (3) The possession of a drug in violation of section 328-86(c);
- (4) Obtaining a drug in violation of section 328-86(d);
- (5) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug;
- (6) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;
- (7) Inducing any person under the age of eighteen years to buy, traffic in, receive, take, ingest, or otherwise use, any depressant or stimulant drug, except that this prohibition shall not apply to a practitioner acting in the course of his professional practice or in the performance of his official duties;
- (8) The failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by section 328-86(e);
- (9) The refusal to permit access to or copying of any record as required by section 328-86(e);
- (10) The refusal to permit entry or inspection as authorized by section 328-86(e);
- (11) The filling or refilling of any prescription in violation of section 328-86(f).”

2. By amending subsection 328-84(a) to read as follows:

“(a) Any person violating any of the provisions of section 328-82(1) to (6) shall be fined not more than \$1,000 and imprisoned for not more than ten years for the first offense, and fined not more than \$2,000 and imprisoned for not more than twenty years for any subsequent offense; provided, that any person who violates section 328-82(2) by selling, delivering, or otherwise disposing of any depressant or stimulant drug to any person under the age of eighteen years, or who violates section 328-82(7), shall be fined not more than \$1,000 and imprisoned for not more than twenty years for the first offense, and fined not more than \$2,000 and imprisoned for life for any subsequent offense.”

SECTION 11. Section 329-4 Hawaii Revised Statutes, is amended to read as follows:

“Sec. 329-4 Sale of narcotic drugs to minors; penalty. Any person selling or dispensing any narcotic drug as defined in section 329-1, including marihuana, to any person under the age of eighteen years, or inducing any person under the age of eighteen years to buy, traffic in, receive, take, inject, inhale, or smoke any narcotic drug as defined by section 329-1, including marihuana, except as permitted by this chapter, shall be fined not more than \$1,000 and imprisoned at hard labor not more than twenty years for the first offense, and fined not more than \$2,000 and imprisoned at hard labor for life for any subsequent offense.”

SECTION 12. Section 333-35, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 333-35 Voluntary admission of minors. Upon the written application of a parent or guardian or other person or agency having legal custody, the director of health may permit the admission to Waimano training school and hospital of any minor who comes within sections 333-24 and 333-25, even though no application for commitment under this part has been filed; provided, that no such minor shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital. No minor admitted under this section shall be detained at the Waimano training school and hospital for a period of more than thirty days after a parent or guardian or any adult relative of the admitted minor shall have submitted to the director a written demand for release or discharge, unless an application for commitment under this part has been filed in a circuit court having authority to order the commitment. The period of thirty days may be extended for not more than an additional thirty days by a circuit judge having jurisdiction to order commitments upon the judge’s finding that the extension is for the best interests of the minor. No such voluntary admission shall be permitted for any minor with respect to whom an application for commitment has previously been denied after presentation to a circuit judge having jurisdiction, without the specific written authorization of the judge, or a successor to or substitute for the judge, which authorization may be made subject to such conditions as may be deemed by the judge to promote the best interests of the minor.

Any court-appointed guardian of the person of a minor, before entering into any agreement with the director concerning the voluntary admission of the minor, shall report the plan to the court that appointed the guardian and shall thereafter be guided by the directions of the court.

No person admitted under this section shall be detained at the Waimano training school and hospital after the person has reached his eighteenth birthday unless, prior thereto, an application for commitment has been filed under this part.

Admission under this section shall be subject to such reasonable conditions and regulations as may be established by the director and any person or persons legally liable for the support of the minor may be required to pay to the Waimano training school and hospital such reasonable sums as may be

determined by the director as contributions towards the support, maintenance and treatment of the minor therein.”

SECTION 13. Section 351-2, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 351-2 Definitions.** As used in this chapter, unless the context otherwise requires:

“Child” means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child;

“Commission” means the criminal injuries compensation commission established by this chapter;

“Dependents” means such relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after his death;

“Injury” means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and “Injured” has a corresponding meaning;

“Private citizen” means any natural person other than a peace officer of the State;

“Relative” means a victim’s spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse’s parents;

“Victim” means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section 351-32 of this chapter.”

SECTION 14. Chapter 359G, Hawaii Revised Statutes, is amended in the following respects:

1. By amending subsection 359G-4(a) to read as follows:

“(a) Develop fee simple or leasehold property, construct dwelling units thereon, including condominiums and planned units, and sell, lease or rent or cause to be leased or rented the land and the completed units at the lowest possible price to qualified residents of the State, and the authority shall perform such functions in partnership with a qualified partner or partners as hereinafter defined, or shall act in its own behalf.

A qualified resident means a person who:

- (1) Is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this chapter; and
- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase.

Any person whom the authority finds to be within one of the following classes, shall not be eligible to become a purchaser of a dwelling unit, to wit:

- (1) A person who himself or whose husband or wife or both (when husband and wife are living together) owns or own in fee simple or leasehold lands suitable for dwelling purposes within the county and in or reasonably near the place of residence or place of business of the person; and
- (2) A person who himself or whose husband or wife (when husband and wife are living together) has pending an unrefused application to purchase a dwelling unit under this chapter from the authority.

The authority shall require all applicants for the purchase of dwelling units to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this chapter by the authority shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the authority in connection with any application shall constitute perjury and be punishable as such. The authority shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has units available."

2. By amending subsection 359G-17(a) to read as follows:

"(a) No person shall be qualified for a downpayment loan, unless he:

- (1) Is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State of one year or more;
- (4) Has a bona fide intent to reside in the residential property to be purchased;
- (5) Is accepted by a private lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) Has the financial capacity to repay the downpayment loan."

3. By amending subsection 359G-23(a) to read as follows:

"(a) The authority shall not participate in any loan, unless the borrower to whom the private lender is willing to make the loan:

- (1) Is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State of one year or more;
- (4) Has a bona fide intent to reside in the residential property to be purchased;
- (5) Has the ability to repay the loan; and
- (6) Has a gross income of not more than \$20,000 per annum (the gross income of the borrower's spouse, if the borrower is married, shall be counted, except where the borrower is living separate and apart from

his spouse under a decree of a court of competent jurisdiction) or is fifty-five years of age or more, or is a person displaced by government action other than eviction due to his fault.”

SECTION 15. Chapter 431, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 431-367 to read as follows:

“Sec. 431-367 General qualifications for license. For the protection of the people of this State the insurance commissioner shall not issue or extend any such license except in compliance with sections 431-361 to 431-407, and shall not issue or extend any such license to any individual less than eighteen years of age.”

2. By amending subsections 431-412(c) and (d) to read as follows:

“(c) Where any form of life or disability insurance is issued at any time upon the life or body of a minor, unless the policy shall otherwise provide, or unless all of the premiums on the policy shall be paid by the minor, then until such minor shall have reached the age of eighteen years, the father of the minor, or in the event of the death of the father or the divorce of the parents and the custody of the minor being awarded to the mother, then the mother of the minor shall be authorized to surrender, make loans upon or assign such insurance and to give a valid discharge for any benefit accruing or for money payable under the contract, and to exercise any of the rights or privileges reserved to the insured in and by any such policy of insurance without the order or intervention of any court, or the appointment of a legal guardian, and no insurer shall have any responsibility for or be required to see to the application of the proceeds paid in accordance herewith.

(d) Unless at the time of issuance, the policy of insurance shall provide otherwise, the ownership of, or property interest of the insured in, any policy of life insurance issued on the life of any minor shall be deemed to be in the minor and shall continue in the minor unless and until the same shall have lapsed or shall have been surrendered, assigned, or otherwise acted upon in accordance with the provisions hereof while the minor is under the age of eighteen years, or unless and until after the insured shall have reached the age of eighteen years the same shall have lapsed or shall have been surrendered, assigned, or otherwise acted upon by the insured.”

SECTION 16. Section 441-26, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 441-26 No cemetery or pre-need funeral salesman license issued when. No cemetery or pre-need funeral salesman license shall be issued:

- (1) To any person unless he has filed an application therefor;
- (2) To any person who does not possess a good character and reputation for honesty, truthfulness, and fair dealing; or any person who has been convicted of a felony or misdemeanor involving moral turpitude, unless the person has received a full and free pardon or presents satisfactory proof to the cemetery board that for the five years next

preceding the date of his application he has lived an upright and moral life;

- (3) To any person unless the person is of the age of eighteen years or more;
- (4) To any person unless he files with the board a bond as required by section 441-27."

SECTION 17. Section 443-7, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 443-7 No license issued when. No license hereunder shall be issued to a person unless:

- (1) He is of the age of eighteen years or more;
- (2) He is a citizen of the United States or has declared his intention to so become;
- (3) He has been a resident of the State for more than one year prior to the date of application;
- (4) He is a high school graduate or proves to the satisfaction of the collection agency advisory board that he possesses the equivalent of a high school education, or is found to be otherwise qualified to operate a collection agency;
- (5) The applicant for a collection agency license, or the renewal thereof, shall apply therefor in writing, under oath, upon blanks furnished by the board, and shall state the full name and residence address of the applicant and the business name and address where he will conduct his collection agency, and in case of a partnership, the full name and residence address of each partner, and in case of a corporation, the full name and residence address of each of its officers and directors with at least one of whom has been a resident of the State for more than one year prior to the date of application.
- (6) The individual applicant, or if the applicant is a partnership, then its partners, or if the applicant is a corporation or an association, then its managing officers and directors, has never been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other similar offenses, or has never been disbarred from the practice of law;
- (7) The applicant obtains a tax clearance from the State and from the county in which the applicant plans to have his principal place of business as a collector."

SECTION 18. Section 444-11, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 444-11 No license issued to: No license hereunder shall be issued to:

- (1) Any person unless he has filed an application therefor;
- (2) Any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any individual unless he is of the age of eighteen years or more;

- (4) Any individual qualifying as a contractor unless he has been a resident of the State for at least one year;
- (5) Any copartnership or joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a partner or employee thereof, unless such partner has been a resident of the State for at least one year or such employee has been a resident of the State for at least two years, and unless such partner or employee holds an appropriate license;
- (6) Any individual who is unable to qualify as a contractor or any corporation, unless the contracting business of such individual or corporation is under the direct management of an officer or employee thereof, unless such officer or employee has been a resident of the State for at least two years, and unless such officer or employee holds an appropriate license;
- (7) Any person unless he submits satisfactory proof to the contractors license board that he has obtained workmen's compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.
- (8) The provisions of this section shall not apply when it is determined by the contractors license board that less than ten persons are qualified to perform the work in question. The provisions also shall not apply with respect to projects which require additional qualifications beyond those established by the licensing law, and which are deemed necessary and in the public interest by the contracting agency."

SECTION 19. Section 448-9, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 448-9 Application for examination; fee. Any person of the age of eighteen years or more, who is a citizen of the United States, and has been a resident of the State for at least one year, and who is of good moral character, shall be eligible to take an examination before the board of dental examiners upon complying with the following requirements:

Applications for examination shall be made out and filed in writing with the secretary of the board and each such application shall be accompanied by a fee of \$50 which shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

Each applicant shall file, in writing with the secretary at least thirty days prior to the date selected by the board for the examination the following credentials:

- (1) A diploma or certificate of graduation from an American dental college recognized and approved by the board;
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of dental examiners, and the secretary of the state dental association of that state;

(3) A recent unmounted photograph of the applicant.”

SECTION 20. Section 448E-5, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 448E-5 Minimum requirements.** An applicant shall possess the following minimum qualifications:

- (1) Journeyman electrician. Every applicant to be eligible for the journeyman electrician examination shall be at least eighteen years of age and must have had at least four years' experience in the trade.
- (2) Journeyman specialty electrician. Every applicant to be eligible for the journeyman specialty electrician examination shall be at least eighteen years of age and must have had at least four years' experience in the trade.
- (3) Supervising electrician. Every applicant to be eligible for the supervising electrician examination shall have been registered with the board as a journeyman electrician for at least a period of two years in the trade or shall have had equivalent experience in the trade.
- (4) Supervising specialty electrician. Every applicant to be eligible for the supervising specialty electrician examination shall have been registered with the board as a journeyman specialty electrician for at least a period of two years in the trade or shall have had equivalent experience in the trade.
- (5) Motion picture operator. Every applicant to be eligible for the motion picture operator examination shall be not less than eighteen years of age and shall have had not less than one year of experience under supervision of a registered motion picture operator in the operation of machines for the projection of motion pictures for commercial purposes in the trade.
- (6) Journeyman plumber. Every applicant to be eligible for the journeyman plumber examination shall have had experience of at least five years' full-time or its equivalent but not less than 10,000 hours as a journeyman's or master plumber's helper, and is able to furnish satisfactory evidence of such fact.
- (7) Master plumber. Every applicant to be eligible for the master plumber examination shall have been registered with the board as a journeyman plumber for at least two years or shall have had equivalent experience in the trade.”

SECTION 21. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No mortgage broker or mortgage solicitor license shall be granted to any person who is not a citizen of the United States, or who is not eighteen years of age or older.”

SECTION 22. Section 456-2, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 456-2 Qualifications; oath.** Every person appointed a notary public shall, at the time of his appointment, be a resident of the State for one

year, possess the other qualifications required of public officers and be at least eighteen years of age; provided, that the attorney general may, for public convenience and necessity, commission a notary for any number of judicial circuits, and the notary shall keep a separate record for each circuit. Every person appointed to that office shall, before entering thereon, take and subscribe an oath for the faithful discharge of his duties, which oath shall be filed in the department of the attorney general."

SECTION 23. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 459-7 Examination; certificate of registration. Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry shall, before beginning or continuing such practice, upon presentation of satisfactory evidence, verified by oath, that he is at least eighteen years of age, is a citizen of the United States, has been a resident in the State for at least one year, is a graduate of a high school, is a graduate of an American optometric college, school, or university recognized and approved by the board of examiners in optometry and the American Optometric Association, take an examination before the board upon complying with the following requirements:

Applications for examination shall be made out and filed in writing with the secretary of the board and each application shall be accompanied by a fee of \$20 [30], which shall be retained by the board.

Each applicant shall file, in writing, with the secretary at least thirty days prior to the date selected by the board for such examination, the following credentials:

- (1) A diploma or certificate of graduation from an American optometric college or school recognized and approved by the board;
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of optometric examiners, and the secretary of the state optometric association of that state;
- (3) An unretouched unmounted recent photograph of the applicant.

The applicants shall be given due notice of the date and place of examination. No applicant who fails to obtain an average of seventy per cent in every subject upon which he is examined shall be passed by the board. If an applicant, because of his failure to pass an examination is refused a license, he shall, within one year, be permitted to take a second examination without additional fee. If an applicant fails the second time, he shall be required to file a new application and to pay an additional fee of \$20 [30]. If an applicant fails the third time or any subsequent time, he shall be required to file a new application and to pay an additional fee of \$20 [30] and to take a complete examination.

An appeal to the circuit court, of the circuit within which the applicant resides, may be taken from any decision of the board by any applicant who is refused or denied a certificate.

Every candidate who passes an examination, satisfactorily to the board, shall be registered as possessing the qualifications required by this chapter, and shall receive from the board a proper certificate of registration. Before any certificate is issued it shall be numbered and recorded in a book kept by the secretary of the board of examiners in optometry.

Each registered optometrist shall pay an annual license fee of \$5 [7.50] between December 1 and December 31 of each year to the treasurer of the board for a renewal of his registration certificate for the year next following. The failure of any regular licensed optometrist to pay his annual license fee in advance on or before December 31 of each year, during the time his license remains in force, shall, ipso facto, work a revocation and forfeiture of his license. Any person whose license is so revoked and forfeited shall pay a penalty of \$25 for the restoration of his license, and, in addition, all delinquent annual license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within three years, the license shall not be restored unless the regular examination for applicants is passed by such person."

SECTION 24. Section 460-6, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 460-6 Application for license. Each applicant for a license provided for in this chapter shall comply with the following requirements:

- (1) Make application on blank forms prepared and furnished by the board of osteopathic examiners;
- (2) Submit evidence verified on oath and satisfactory to the board that the applicant is eighteen years of age, or over, is of good moral character, and is a graduate of a school or college of osteopathy which is approved by the American Osteopathic Association;
- (3) Designate on his application whether he desires to practice as an osteopathic physician or as an osteopathic physician and surgeon."

SECTION 25. Section 461-5, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 461-5 Qualifications for license. Any applicant for a license as a pharmacist shall be at least eighteen years of age, of good moral character and temperate habits, and a graduate of a school or college of pharmacy or department of a university, which school or college or department is recognized and approved by the American Council of Pharmaceutical Education. He shall file proof satisfactory to the board of pharmacy of a minimum of one year of practical experience in any state of the United States in a pharmacy under the supervision of a registered pharmacist, and he shall pass an examination to be given by the board. Service and experience in a pharmacy under the supervision of a registered pharmacist as required in this section shall be predominantly related to the selling of drugs, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes.

Any registered pharmacist of any state or territory of the United States who has practiced pharmacy there for two years or more shall be eligible to take the examination if he is of good moral character and temperate habits.

Every applicant must have been a resident of the State for at least one year immediately preceding the granting of a permanent license.

In the event an applicant has no practical experience as required, he may take the examination and upon passing the same, he shall not receive his license until after the fulfillment of the practical experience required."

SECTION 26. Section 462-9, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 462-9 Licensing. The board of photography shall receive applications from any person desiring to engage in business within the State as a professional photographer who is over the age of eighteen years and is a bona fide resident of the State. Upon proof that the applicant has had experience of a year or more in commercial or noncommercial photography of a kind which would enable him to engage in professional photography, or upon proof that the applicant has received a diploma from a recognized school of photography, the board shall issue a license to the applicant, who shall thereupon pay the annual fee required by section 462-10; provided, that no license shall be granted to a person who is not of good moral character. A license may be issued for one or both of the following two classifications; namely, portrait or commercial. Each license granted by the board shall be extended from year to year upon payment of the annual fee, unless revoked for cause by the board.

The board shall also accept an application from, and issue a license to any firm, company, partnership, or corporation engaged in professional photography, hereinafter referred to as a "firm", whose owner, supervising head, or principal operator is in possession of a valid individual license. Except as required in the preceding sentence, employees of the firm need not be licensed under this chapter, but the firm shall be responsible for their failure to maintain the high degree of integrity required by the rules and regulations for licensed professional photographers."

SECTION 27. Section 466-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"Sec. 466-8 Qualifications of C.P.A. (a) An applicant for admission to the examination for a certified public accountant certificate shall:

- (1) Be a citizen of the United States or have declared his intention of becoming a citizen;
- (2) Have been a bona fide resident of the State for at least one year immediately preceding the time his application is filed;
- (3) Be over the age of eighteen years;
- (4) Be of good moral character; and
- (5) Comply with any of the following:
 - (A) He shall present satisfactory evidence that he is a graduate of a four year college or university included in the list of Accredited Higher Institutions issued by the Department of Health, Educa-

tion, and Welfare, or in the absence of such list, any comparable list recognized by the regents of the University of Hawaii.

- (B) He shall be a public accountant registered under this chapter and shall present satisfactory evidence that he has completed a four year high school course or the equivalent hours of courses of study in an evening high school which included three years of English and two years of mathematics.”

SECTION 28. Section 469-1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 469-1 License. The department of health, may, upon payment to it of an examination fee of \$25, examine, or cause to be examined by not less than two practicing embalmers, undertakers, or funeral directors, any person over eighteen years of age, of good moral character, resident at least one year in the State, and with qualifications specified in one of the following categories:

- (1) A minimum of five years practical experience under the supervision of a registered embalmer or undertaker in the State.
- (2) A minimum of two years practical experience under the supervision of a registered embalmer or undertaker in the State and completion of a four-year high school course or equivalent educational training.
- (3) Not less than one year of practical experience and graduation from a recognized school of embalming.
- (4) Holder of a state license for embalming.

All examinations shall be conducted in writing and supplemented by practical demonstrations and shall be upon such subjects as the department may by regulation prescribe. Every person who passes the examination shall be given a license as an embalmer.”

SECTION 29. Section 471-8, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 471-8 Examinations; qualifications of applicants. No person shall be licensed to practice veterinary medicine unless he has passed an examination of his qualifications and fitness to engage in such practice given by the board of veterinary examiners. Before any applicant shall be eligible for examination under this chapter he shall, at least thirty days before the date set for examination, file an application in such form as shall be prescribed by the board, pay to the treasurer of the board an examination fee of \$35, and furnish proof satisfactory to the board that:

- (1) He is eighteen or more years of age, of good moral character, and has been a resident of the State for at least one year;
- (2) He is a graduate of a veterinary college meeting all the standards established by the American Veterinary Medical Association, or, in lieu thereof, has actively practiced for ten out of the twelve years immediately preceding the date of application in a state having standards for licensing comparable to those in the State.

Examinations shall be given by the board in April and September of each year except when there are no applications pending. They shall be composed of written and oral questions and practical demonstrations. The same questions shall be given to each person being examined during a particular examination. The subject matter of the examinations shall embrace the subjects and demonstrations of practical ability normally covered in the curricula of American Veterinary colleges.

The requirements imposed by this section shall not be a bar to renewal, reissuance, or restoration of any license issued prior to May 13, 1949.

The governor, upon the recommendation of the board and where in the opinion of the board a public emergency precludes obtaining an adequate number of veterinarians who have the residence qualifications required by this section, may waive the residential requirements in each instance during the period of emergency."

SECTION 30. Section 516-33, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 516-33 Qualification for lease or purchase. Except in the case of a sale to the lessee of the leased fee interest to any residential lot under lease, no lease or sale of any residential house lot within a development tract shall be made to any person:

- (1) Unless he is a citizen of the United States or a declarant alien who has resided in the State for a period of five years or more; is at least eighteen years of age; is a bona fide resident of the State and has a bona fide intent to reside in the development tract if successful in purchasing or leasing the lot; and has sufficient financial capabilities to meet the sales price or lease rentals;
- (2) Who owns in fee simple lands suitable for residential purposes within the county and in or reasonably near the place of business of such person or has or have pending before the Hawaii housing authority an unrefused application to lease or purchase a lot in a development tract. A person is deemed to own lands herein if he, his spouse, or both he and his spouse (unless separated and living apart under a decree of a court of competent jurisdiction) owns lands.

The authority may require additional testimony or evidence under oath in connection with any application. The determination by the authority of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by applicants or other person in connection with any application shall constitute perjury and be punishable as such."

SECTION 31. Section 536-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 536-1 Age; sound mind; disposal of testator's body. Every person of the age of eighteen years of sound mind may dispose of his estate both real and personal by will, and in addition, may by will make a gift of the whole or any part of his body as provided in part I of chapter 327."

SECTION 32. Section 551-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 551-12 Powers and duties. Every guardian appointed as provided in section 551-11 shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor arrives at the age of eighteen years, or until the guardian is discharged according to law; provided that the natural guardian of the minor, if competent, shall be entitled to the custody of the person of the minor, and to the care of his education."

SECTION 33. Chapter 571, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 571-2 to read as follows:

"Sec. 571-2 Definitions. When used in this chapter, unless the context otherwise requires:

- (1) "Court" means one of the family courts as herein established.
- (2) "Judge" means judge of the family court.
- (3) "Senior judge" means the judge so designated, as provided in this chapter.
- (4) "Board" means the board of family court judges.
- (5) "Child" or "minor" means a person less than eighteen years of age.
- (7) "Adult" means a person eighteen years of age or older.
- (8) "Detention" means the temporary care of children who require secure custody for their own or the community's protection in physically restricting facilities pending court disposition.
- (9) "Shelter" means the temporary care of children in physically unrestricting facilities pending court disposition.
- (10) "Guardianship of the person of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes but shall not necessarily be limited in either number or kind to:
 - (A) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor or substantial legal significance;
 - (B) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
 - (C) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution;
 - (D) The authority to consent to the adoption of the minor and to make any other decision concerning him which his parents could make, when the rights of his parents, only living parent, have

been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of his legal parents are deceased.

- (11) "Legal custody" means the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.
- (12) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation, consent to adoption or marriage, and the responsibility for support.
- (13) "Commit" means to transfer legal custody.
- (14) "Probation" means a legal status created by court order following adjudication in a case involving a violation of law whereby a minor is permitted to remain in his home subject to supervision by the court or any agency designated by the court and subject to return to the court for violation of probation at any time during the period of probation.
- (15) "Protective supervision" means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the minor is subject to change, whereby the minor is permitted to remain in his home under the supervision of the court or any agency designated by the court and subject to return to the court during the period of protective supervision.
- (16) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter."

2. By amending section 571-11 to read as follows:

"Sec. 571-11 Jurisdiction; children, minors. Except as otherwise provided herein, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any child who is alleged to have violated or attempted to violate any federal, state, or local law or municipal ordinance, regardless of where the violation occurred; or any person alleged to have violated or attempted to violate any federal, state, or local law or municipal ordinance prior to having become eighteen years of age. The minor shall be dealt with under the provisions of this chapter relating to children. Jurisdiction may be taken by the court of the circuit where the minor is living or found, or in which the offense is alleged to have occurred.
- (2) Concerning any child living or found within the circuit
 - (A) who is neglected as to proper or necessary support, or education as required by law, or as to medical or other care necessary for

his well-being, or who is abandoned by his parent or other custodian; or

(B) whose environment is injurious to his welfare, or whose behavior is injurious to his own or others' welfare; or

(C) who is beyond the control of his parent or other custodian.

(3) To determine the custody of any minor or appoint a guardian of the person of any minor.

(4) For the adoption of a person under chapter 578.

(5) For the termination of parental rights under sections 571-61 to 571-63.

(6) For judicial consent to the marriage, employment, or enlistment of a minor, when such consent is required by law.

(7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill minor.

(8) Under the Interstate Compact on Juveniles under chapter 582."

3. By amending section 571-13 to read as follows:

"Sec. 571-13 Retention of jurisdiction. Jurisdiction obtained by the court in the case of a child may be retained by it, for the purposes of this chapter, until he becomes eighteen years of age, unless judicially terminated prior thereto.

4. By amending subsection 571-22(a) to read as follows:

"(a) The court may waive jurisdiction and order a minor held for criminal proceedings after the full investigation and hearing when a child sixteen years of age or over is alleged to have committed an act which would constitute a felony if committed by an adult, and the court finds there is no evidence the child or minor is committable to an institution for the mentally defective or retarded or the mentally ill, is not treatable in any available institution or facility within the State designed for the care and treatment of children, or that the safety of the community requires that the child or minor continue under restraint for a period extending beyond his minority."

5. By amending section 571-31 to read as follows:

"Sec. 571-31 Taking children into custody; release; notice. A child may be taken into custody by any police officer without order of the judge (1) when in the presence of the officer the child has violated a state or federal law or a county or municipal ordinance; (2) when there are reasonable grounds to believe that he has committed an act which if committed by an adult would be a felony; (3) when he is seriously endangered in his surroundings and immediate removal appears to be necessary for his protection; (4) when there are reasonable grounds to believe that he has run away from his parents, guardian, or legal custodian.

When an officer or other person takes a child into custody the parents, guardian, or legal custodian shall be notified immediately. The child shall be released to the care of his parent or other responsible adult unless his immediate welfare or the protection of the community requires that he be detained. If the person taking the child into custody believes it desirable, he may request the parent, guardian, or legal custodian to sign a written promise to bring the child to the court at the time directed by the court.

If a parent or other responsible custodian fails to produce the child in court as required by an authorized notice, or when notified by the court, a summons or warrant may be issued for the apprehension of that person or the child or both. The court may assess the cost of the issuance and execution of the summons or warrant against the person.

This section shall apply to any adult who comes within section 571-11(1) or (2)."

SECTION 34. Chapter 572, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 572-2 to read as follows:

"Sec. 572-2 Consent of parent or guardian. Whenever any person who is under the age of eighteen is to be married, the written consent of his or her parents, or guardian or other person in whose care and custody he or she may be, shall accompany the application for a license to marry. No license shall be issued to any minor who is under the jurisdiction of the family court without the written consent of a judge of such court."

2. By amending section 572-9 to read as follows:

"Sec. 572-9 Persons under age. Whenever any person who is under the age of eighteen, whose parents are dead, or who is a ward of a family court, applies for a license to marry, he or she shall set forth in the statement accompanying the application, the name of his or her guardian or of any other person in whose care and custody he or she may be."

SECTION 35. Section 577A-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 577A-1 Definition. For the purpose of this chapter, the following terms shall be defined as follows:

"Minor" shall be any person from the age of fourteen to seventeen inclusive.

"Medical care and services" means the diagnosis, examination and administration of medication in the treatment of venereal diseases and pregnancy. It shall not include surgery or any treatment to induce abortion except as permitted under section 768-7."

SECTION 36. Section 579-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 579-4 Trial; judgment. If the defendant fails to appear, any bond for his appearance shall be forfeited; but the trial of, or other proceedings in, the cause shall, nevertheless, proceed as though he were present; and the court shall upon the findings of the judge make such orders as it deems proper as though the defendant were in court.

If the defendant acknowledges in writing or orally before the court the paternity of the child, or if at the trial the finding of the court or jury be against the defendant, the court, in rendering judgment thereon, may make an order for the payment of or reimbursement for all expenses resulting from or incident to the mother's pregnancy and the birth of the child in such amount

or amounts as may be deemed reasonable by the court. It shall also make an order that the defendant pay for the support, maintenance, and education of the child, until the child reaches eighteen years of age, unless the child, prior thereto, is adopted, emancipated, or becomes self-supporting, such sums of money, in such installments, and in such manner, as the court deems just, taking into consideration the financial standing of the defendant, his income, earning capacity, and those of his family who are dependent upon him for their support, maintenance, and education.

If the child dies before reaching eighteen years of age, the judgment may include, or may be amended to include, reasonable funeral expenses. The judgment may also include a reasonable fee for any guardian ad litem appointed under section 579-3.

In case of forfeiture of any appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the defendant."

SECTION 37. Chapter 657, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 657-13 to read as follows:

"Sec. 657-13 Infancy, insanity, imprisonment. If any person entitled to bring any action specified in this part (excepting actions against the sheriff, chief of police, or other officers) is, at the time the cause of action accrued, either:

- (1) Within the age of eighteen years; or,
- (2) Insane; or,
- (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life;

such persons shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists."

2. By amending section 657-34 to read as follows:

"Sec. 657-34 Disabilities. If, when right of entry or of action first accrues as aforesaid, the person entitled to the entry or action, is within the age of eighteen years, or insane or imprisoned, such person, or anyone claiming from, by, or under him, may make the entry or bring the action at any time within five years after the disability is removed, notwithstanding the ten years before limited in that behalf, have expired."

SECTION 38. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 39. Except for the bracketed dollar amounts in section 23 of this Act, statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the

brackets (except for the bracketed dollar amounts in section 23), the bracketed material, or the underscoring.*

SECTION 40. This Act shall take effect upon its approval.

(Approved March 28, 1972.)

ACT 3

H. B. NO. 1623

A Bill for an Act Relating to Workmen's Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-91, Hawaii Revised Statutes, is amended to read:

"Section 386-91 Enforcement of decisions awarding compensation; judgment rendered thereon. (a) Any party in interest or the director may file in the circuit court in the jurisdiction of which the injury occurred, a certified copy of (1) a decision of the director of labor and industrial relations awarding compensation, from which no appeal has been taken within the time allowed therefor; or (2) a decision of the director awarding compensation, from which decision an appeal has been taken but as to which decision no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay; or (3) a decision of the appellate board awarding compensation, from which no appeal has been taken within the time allowed therefor; or (4) a decision of the appellate board awarding compensation, from which an appeal has been taken but as to which decision no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay. The court shall render a judgment in accordance with such decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment has been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the director or the appellate board or the court that the appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void if the decision or award of the director or appellate board, as the case may be, is finally set aside.

(c) In addition to the enforcement remedies set forth in subsection (a) above, the director or employee as part of the proceedings set out therein may ask the court to fine the employer from 1% to 5% of the judgment, which said fine shall be payable to the employee: (1) where the employer does not take an appeal from the decision of the director within the time allowed therefor and does not commence making payments within ten days after such appeal period

*Edited accordingly.

has expired, or (2) where the employer does take an appeal from the decision of the director within the time allowed therefor but the appellate board does not order that the appeal therefrom shall operate as a supersedeas or stay and the employer does not commence making payments within ten days after such action of the appellate board.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved March 30, 1972.)

ACT 4

H.B. NO. 490

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

Section 1. Section 383-43, Hawaii Revised Statutes is amended to read:

“**S383-43 Payment of benefits.** Benefits shall be paid promptly in accordance with a determination, redetermination, or decision on appeal. No injunction, supersedeas, or stay suspending the payment of benefits in accordance with said determination, redetermination, or decision on appeal shall be issued by any court, but if said decision is finally reversed, benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.”

Section 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

Section 3. This Act shall take effect upon its approval.

(Approved April 6, 1972.)

ACT 5

H. B. NO. 1746-72

A Bill for an Act Relating to the Destruction of Warrants, Bonds, Interest Coupons, etc.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 40-11, Hawaii Revised Statutes, is amended to read:

“**Sec. 40-11 Destruction of warrants, bonds and interest coupons.** The director of finance and comptroller may supervise and conduct the destruction

*Edited accordingly.

by burning, machine shredding, chemical disintegration or any other method of disposal deemed acceptable to them of all warrants of the State which have been paid and which bear any date ten years prior to the date of destruction. The director of finance and comptroller may also supervise and conduct the destruction by burning, machine shredding, chemical disintegration, or any other method of disposal deemed acceptable to them of state bonds and interest coupons which have been paid and which bear any date two years prior to the date of destruction, provided, that the director of finance and comptroller may appoint the fiscal agent for the bond issue to supervise and conduct the destruction of state bonds and interest coupons which have been paid and which bear any date two years prior to the date of destruction. The fiscal agent so appointed shall submit reports as required by the director of finance and comptroller."

SECTION 2. Section 40-12, Hawaii Revised Statutes, is amended to read:

"Sec. 40-12 Examination before destruction. Before the warrants, bonds, and interest coupons are destroyed, the comptroller or the fiscal agent appointed pursuant to section 40-11 shall conduct such examination and investigation as is necessary to determine that the warrants to be destroyed bear any date ten years prior to the date of destruction and that the bonds and interest coupons bear any date two years prior to the date of destruction."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 1972.)

ACT 6

H. B. NO. 1747-72

A Bill for an Act Relating to Responsibility of the Director of Finance for Moneys Paid into the Treasury.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-1, Hawaii Revised Statutes, is amended to read:

"Sec. 36-1 Responsibility for moneys. The director of finance shall be responsible for the safekeeping of all moneys paid into the treasury, and for the proper disbursement and appropriation thereof, pursuant to the laws; and he shall be liable therefor on his official bond, provided, that in case of the larceny or embezzlement of any moneys, by any officer of his department, or other persons, the director shall be allowed to give that fact, and that he had

*Edited accordingly.

no collusive knowledge thereof, in evidence, and the establishment of these facts shall discharge him from responsibility."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 6, 1972.)

ACT 7

H. B. NO. 1912-72

A Bill for an Act Relating to the Expenditure of Public Money and Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-23, Hawaii Revised Statutes, is amended to read:

"Sec. 103-23 Additional exceptions. Expenditures in excess of such sum without so contracting may be made, with the approval of the legislative body, in the case of a county, or of the governor, in the case of the State or of its board or other governing authority, in the case of any independent board or agency, when expenditures are for repairs of roads, water works and buildings, or, with such approval, expenditures not in excess of \$15,000 for alterations of buildings, or when the work to be done is of such a nature that its extent and character cannot be known or specified beforehand with reasonable certainty, or when no tender is received in response to an advertisement, or, with such approval, expenditures not in excess of \$15,000 for new roads, water works, and buildings, either on behalf of the expending division of government or for the federal or state government or any department thereof may be made, without contract, advertisement or sealed tenders; and, in the case of such new roads, water works and buildings, expenditures in excess of \$15,000 may be made, with the same approval, provided that the expending division of government shall first advertise for sealed tenders and shall keep a full and true account of the cost of the work, if done by itself, without awarding a contract therefor, and shall, upon the completion of the work, publish a full and true statement of its cost and of the amounts of rejected tenders, if any; and provided that any governmental agency actually performing the work shall in no case receive more than the actual cost thereof.

"Nothing provided in section 103-22 shall prevent the department of health, if, after publication of a call for tenders, it receives no bids from any responsible bidder or only one bid therefrom, from purchasing at regular market prices, meats, on the hoof or otherwise, and foodstuffs, as may from time to time be required for the Kalaupapa settlement.

*Edited accordingly.

ACT 8

“Special or subcontracts by any governmental agency for materials or supplies or purchases of materials or supplies made in furtherance of the contract referred to in this section, shall be subject to the requirement of public advertisement for sealed tenders in the manner provided by law.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed materials, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 6, 1972.)

ACT 8

H. B. NO. 1913-72

A Bill for an Act Relating to General Obligation Bonds of the State.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Notwithstanding the interest rate limitation contained in Section 39-5, Hawaii Revised Statutes, bonds issued after March 31, 1972 but prior to April 1, 1973 under Part I of Chapter 39, Hawaii Revised Statutes, may bear interest, payable annually or semi-annually, at a rate or rates not exceeding eight per cent a year.

SECTION 2. This Act shall take effect upon its approval.

(Approved April 6, 1972.)

ACT 9

H. B. NO. 20

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

Section 1. The Hawaii Revised Statutes is amended by adding the Hawaii Penal Code to be codified as Title 37, Hawaii Revised Statutes, and to read as follows:

TITLE 37. HAWAII PENAL CODE

CHAPTER I

PRELIMINARY PROVISIONS

Sec. 100—Title and effective date.

This Act shall be known as the Hawaii Penal Code. It shall become effective on January 1, 1973.

Sec. 101—Applicability to offenses committed before the effective date.

(1) Except as provided in subsections (2) and (3), this Code does not

*Edited accordingly.

apply to offenses committed before its effective date. Prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose, as if this Code were not in force. For purposes of this section, an offense is committed before the effective date if any of the elements of the offense occurred before that date.

(2) In any case pending on or commenced after the effective date of this Code, involving an offense committed before that date:

- (a) Upon the request of the defendant a defense or mitigation under this Code, whether specifically provided for herein or based upon the failure of the Code to define an applicable offense, shall apply; and
- (b) Upon the request of the defendant and the approval of the court:
 - (i) Procedural provisions of this Code shall apply insofar as they are justly applicable; and
 - (ii) The court may impose a sentence or suspend imposition of a sentence under the provisions of this Code applicable to the offense and the offender.

(3) Provisions of this Code governing the release or discharge of prisoners, probationers, and parolees shall apply to persons under sentence for offenses committed before the effective date of this Code, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall the provisions of this Code affect the substantive or procedural validity of any judgment of conviction entered before the effective date of this Code, regardless of the fact that appeal time has not run or that an appeal is pending.

Sec. 102—All offenses defined by statute; applicability to offenses committed after the effective date..

(1) No behavior constitutes an offense unless it is a crime or violation under this Code or another statute of this State.

(2) The provisions of this Code govern the construction of and punishment for any offense set forth herein committed after the effective date, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of chapters 1 through 6 of the Code are applicable to offenses defined by other statutes, unless the Code otherwise provides.

Sec. 103—Purposes of this Code.

The purposes of this Code are to codify the general principles of the penal law and to define and codify certain specific offenses which constitute harms to basic social interests which the Code seeks to protect.

Sec. 104—Principles of Construction.

The provisions of this Code cannot be extended by analogy so as to create crimes not provided for herein, however, in order to promote justice and effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of the words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

Sec. 105—Effect of commentary.

The commentary accompanying the Judicial Council of Hawaii's proposed draft of the Hawaii Penal Code (1970), as revised, shall be published with this Code and may be used as an aid in understanding the provisions of this Code, but not as evidence of legislative intent.

Sec. 106—Territorial applicability.

(1) Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

- (a) Either the conduct or the result which is an element of the offense occurs within this State; or
- (b) Conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State; or
- (c) Conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State; or
- (d) Conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State; or
- (e) The offense consists of the omission, while within or outside this State to perform a legal duty imposed by the law of this State with respect to domicile, residence, or a relationship to a person, thing, or transaction in the State; or
- (f) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows that his conduct is likely to affect that interest.

(2) Subsection (1) (a) does not apply when a specified result, or conduct creating a risk of such a result, is an element of an offense and the result occurs, or is intended or is likely to occur, only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare that the conduct constitutes an offense regardless of the place of the result.

(3) Subsection (1) (a) does not apply when a particular result is an element of an offense and the result is caused by conduct occurring outside the State which conduct would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within the State.

(4) When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection (1) (a). If the body of a homicide victim is found within the State, it is prima facie evidence that the result occurred within the State.

(5) This State includes the land and water and the air space about the land and water with respect to which the State has legislative jurisdiction.

Sec. 107—Grades and classes of offenses.

(1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies are of three classes: class A, class B, and class C.

(2) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined in a statute other than this Code which provides for a term of imprisonment the maximum of which is one year.

(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code which provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one year.

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code which provides that the offense shall not constitute a crime. A violation does not constitute a crime, and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense.

(6) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(7) An offense defined by any statute of this State other than this Code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

Sec. 108—Time Limitations.

(1) A prosecution for murder may be commenced at any time.

(2) Except as otherwise provided in this section and in section 740, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a class A felony must be commenced within six years after it is committed;

(b) A prosecution for any other felony must be commenced within three years after it is committed;

(c) A prosecution for a misdemeanor must be commenced within two years after it is committed;

(d) A prosecution for a petty misdemeanor or a violation must be commenced within one year after it is committed.

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for;

(a) Any offense an element of which is either fraud or a breach of fid-

uciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; and

- (b) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(6) The period of limitation does not run:

- (a) During any time when the accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or
- (b) During any time when a prosecution against the accused for the same conduct is pending in this State.

Sec. 109—Method of prosecution when conduct establishes an element of more than one offense.

(1) When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. He may not, however, be convicted of more than one offense if:

- (a) One offense is included in the other, as defined in subsection (4) of this section; or
- (b) One offense consists only of a conspiracy or solicitation to commit the other; or
- (c) Inconsistent findings of fact are required to establish the commission of the offenses; or
- (d) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
- (e) The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of conduct constitute separate offenses.

(2) Except as provided in subsection (3) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

(3) When a defendant is charged with two or more offenses based on the same conduct or arising from the same episode, the court, on application of the prosecuting attorney or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

(4) A defendant may be convicted of an offense included in an offense charged in the indictment or the information. An offense is so included when:

- (a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
- (b) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or
- (c) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a different state of mind indicating lesser degree of culpability suffices to establish its commission.

(5) The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

Sec. 110—When prosecution is barred by former prosecution for the same offense.

When a prosecution is for an offense under the same statutory provision and is based on the same facts as a former prosecution, it is barred by the former prosecution under any of the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside on appeal by the defendant.

(2) The former prosecution was terminated, after the information had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty or nolo contendere accepted by the court.

(4) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

- (a) The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.

- (b) The trial court finds the termination is necessary because:
- (i) It is physically impossible to proceed with the trial in conformity with law; or
 - (ii) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or
 - (iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the State; or
 - (iv) The jury is unable to agree on a verdict; or
 - (v) False statements of a juror on voir dire prevent a fair trial.

Sec. 111—When prosecution is barred by former prosecution for a different offense.

Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a former prosecution under any of the following circumstances:

- (1) The former prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 110(3) and the subsequent prosecution is for:
 - (a) Any offense of which the defendant could have been convicted on the first prosecution, or
 - (b) Any offense for which the defendant should have been tried on the first prosecution under section 109 unless the court ordered a separate trial of the offense; or
 - (c) An offense based on the same conduct, unless:
 - (i) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or
 - (ii) The second offense was not consummated when the former trial began.
- (2) The former prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.
- (3) The former prosecution was improperly terminated, as improper termination is defined in section 110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

Sec. 112—Former prosecution in another jurisdiction: when a bar.

When behavior constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in any

such other jurisdiction is a bar to a subsequent prosecution in this State under any of the following circumstances:

- (1) The first prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 110(3), and the subsequent prosecution is based on the same conduct, unless:
 - (a) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or
 - (b) The second offense was not consummated when the former trial began.
- (2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.
- (3) The former prosecution was improperly terminated, as improper termination is defined in section 110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

Sec. 113—Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant.

A prosecution is not a bar within the meaning of sections 110, 111, and 112 under any of the following circumstances:

- (1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.
- (2) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed.
- (3) The former prosecution resulted in a judgment of conviction which was held invalid on appeal or in a subsequent proceeding on a writ of habeas corpus, coram nobis, or similar process.

Sec. 114—Proof beyond a reasonable doubt.

(1) No person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

- (a) Each element of the offense;
- (b) The state of mind required to establish each element of the offense;
- (c) Facts establishing jurisdiction;
- (d) Facts establishing venue; and
- (e) Facts establishing that the offense was committed within the time period specified in section 108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

Sec. 115—Defenses.

- (1) A defense is a fact or set of facts which negatives penal liability.
- (2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:
- (a) If the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or
 - (b) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of a contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.
- (3) A defense is an affirmative defense if:
- (a) It is specifically so designated by the Code or another statute; or
 - (b) If the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

Sec. 116—Proving applicability of the Code.

When the application of the Code depends on the finding of a fact which is not required to be found beyond a reasonable doubt:

- (1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and
- (2) The fact must be proved by a preponderance of the evidence.

Sec. 117—Prima facie evidence.

Prima facie evidence of a fact is evidence which, if accepted in its entirety by the trier of fact, is sufficient to prove the fact, provided that no evidence negating the fact, which raises a reasonable doubt in the mind of the trier of fact, is introduced.

Sec. 118—General definitions.

In this Code, unless a different meaning plainly is required:

- (1) "Statute" includes the Constitution of the State and a local law or ordinance of a political subdivision of the State;
- (2) "Act" or "action" means a bodily movement whether voluntary or involuntary;
- (3) "Omission" means a failure to act;
- (4) "Conduct" means an act or omission, or, where relevant, a series of acts or a series of omissions, or a series of acts and omissions;
- (5) "Actor" includes, a person who acts, or, where relevant, a person guilty of omission;
- (6) "Acted" includes, where relevant, "omitted to act";
- (7) "Person," "he," "him," "actor," and "defendant" include any natural person and, where relevant, a corporation or an unincorporated association;

- (8) "Another" means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions; and
- (9) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Sec. 119—Procedure for forfeiture.

(1) Applicability of procedure. Whenever a forfeiture is provided for by this Code, or is otherwise provided for by the law relating to a particular offense or the enforcement of penal laws in general, the procedure for forfeiture shall be as set forth in this section, unless a different procedure is otherwise provided by law.

(2) When forfeiture is ordered. Subject to the requirements of subsection (4), when a forfeiture is authorized by law, it may be ordered by the court upon:

- (a) Motion by the State for forfeiture following the conviction of a person for an offense based on his unlawful possession, use, or other acts with respect to the thing that is forfeited; or
- (b) An action in rem for forfeiture brought by the State upon a complaint alleging that a person, known or unknown, unlawfully possessed, used, or otherwise acted with respect to the thing that is forfeited.

(3) Writs in aid of action in rem. Upon a showing of good cause, the court may, in an action in rem under subsection (2) (a), issue writs of attachment, sequestration, injunction and other appropriate writs in aid of the action.

(4) Notice to interested parties. Upon a motion for forfeiture specified in subsection (2) (a) or the institution of an action in rem specified in subsection (2), (b), the court shall order the thing which may be subject to forfeiture to be held for a period of 60 days, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, publication, or otherwise, shall be given to all persons who might have an interest in the pending forfeiture.

(5) Intervention by claimants. During the 60-day period following the court's order under subsection (4), any person claiming a lawful interest in the thing with respect to which forfeiture is pending may make a claim in the court for the recovery of the thing. The court shall order the thing restored or transferred to the claimant, if any, who proves, by a preponderance of the evidence, that:

- (a) He is the lawful owner thereof;
- (b) His possession, use, or other acts with respect thereto is lawful; and
- (c) The convicted person, if any, possessed, used, or otherwise acted with respect to the thing without the complicity of the claimant.

(6) Declaration of forfeiture and disposition. If no claimant makes the proof required by subsection (5), the court shall declare the thing forfeited to the State; however no forfeiture shall be ordered in an action in rem for forfeiture unless the State satisfies the court that the forfeiture is authorized in the instant case. If the thing declared forfeited is money, the court shall order it

deposited with the director of finance to the credit of the general fund of the State, otherwise the court shall order the thing forfeited transferred to or deposited with the appropriate State or county agency or department for such appropriate disposition as may be ordered by the agency or department.

CHAPTER 2

GENERAL PRINCIPLES OF PENAL LIABILITY

Sec. 200—Requirement of voluntary act or voluntary omission.

(1) In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable.

(2) Where the defense provided in subsection (1) is based on a physical or mental disease, disorder, or defect which precludes or impairs a voluntary act or a voluntary omission, the defense shall be treated exclusively according to the provisions of chapter 4.

Sec. 201—"Voluntary act" defined.

"Voluntary act" means a bodily movement performed consciously or habitually as the result of the effort or determination of the defendant.

Sec. 202—Voluntary act includes possession.

Possession is a voluntary act if the defendant knowingly procured or received the thing possessed or if the defendant was aware of his control of it for a sufficient period to have been able to terminate his possession.

Sec. 203—Penal liability based on an omission.

Penal liability may not be based on an omission unaccompanied by action unless:

(1) The omission is expressly made a sufficient basis for penal liability by the law defining the offense; or

(2) A duty to perform the omitted act is otherwise imposed by law.

Sec. 204—State of mind required.

Except as provided in section 212, a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

Sec. 205—Elements of an offense.

The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as:

(a) Are specified by the definition of the offense, and

(b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

Sec. 206.—Definitions of states of mind.

(1) “Intentionally.”

- (a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.
- (b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.
- (c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

(2) “Knowingly.”

- (a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.
- (b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.
- (c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

(3) “Recklessly.”

- (a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that he engages in such conduct.
- (b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.
- (c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

- (d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person’s conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

(4) “Negligently.”

- (a) A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk that he engages in such conduct.
- (b) A person acts negligently with respect to attendant circumstances when he should be aware of a substantial and unjustifiable risk that such circumstances exist.
- (c) A person acts negligently with respect to result of his conduct when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result.
- (d) A risk is substantial and unjustifiable within the meaning of this subsection if the person’s failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law-abiding person would observe in the same situation.

Sec. 207—Specified state of mind applies to all elements.

When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

Sec. 208—Substitutes for negligence, recklessness, and knowledge.

When the law provides that negligence is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly. When the law provides that recklessness is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally.

Sec. 209—Conditional intent.

When a particular intent is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negatives the harm or evil sought to be prevented by the law prohibiting the offense.

Sec. 210—Requirement of wilfulness satisfied by acting knowingly.

A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the elements of the offense, unless a purpose to impose further requirements appears.

Sec. 211—State of mind as determinant of grade or class of a particular offense.

When the grade or class of a particular offense depends on whether it is committed intentionally, knowingly, recklessly, or negligently, its grade or class shall be the lowest for which the determinative state of mind is established with respect to any element of the offense.

Sec. 212—When state of mind requirements are inapplicable to violations and to crimes defined by statutes other than this Code.

The state of mind requirements prescribed by sections 204 and 207 through 211 do not apply to:

- (1) An offense which constitutes a violation, unless the state of mind requirement involved is included in the definition of the violation or a legislative purpose to impose such a requirement plainly appears; or
- (2) A crime defined by statute other than this Code, insofar as a legislative purpose to impose absolute liability for such offense or with respect to any element thereof plainly appears.

Sec. 213—Effect of absolute liability in reducing grade of offense to violation.

Notwithstanding any other provision of existing law and unless a subsequent statute otherwise provides:

- (1) When absolute liability is imposed with respect to any element of an offense defined by a statute other than this Code and a conviction

is based upon such liability, the offense constitutes a violation except as provided in Sec. 212 (2); and

- (2) Although absolute liability is imposed by law with respect to one or more of the elements of an offense defined by a statute other than this Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes a sufficient state of mind and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by section 107 and chapter 6 of this Code.

Sec. 214—Causal relationship between conduct and result.

Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

Sec. 215—Intentional or knowing causation; different result from that intended or contemplated.

Intentionally or knowingly causing a particular result is not established if the actual result is not within the intention or contemplation of the defendant unless:

- (1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or
- (2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of his offense.

Sec. 216—Reckless or negligent causation; different result from that within the risk.

Recklessly or negligently causing a particular result is not established if the actual result is not within the risk of which the defendant is, or, in the case of negligence, should be, aware unless:

- (1) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm intended or contemplated would have been more serious or more extensive than that caused; or
- (2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of his offense.

Sec. 217—Causation in offenses of absolute liability.

When causing a particular result is an element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the defendant's conduct.

Sec. 218—Ignorance or mistake as a defense.

In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:

- (1) The ignorance or mistake negatives the state of mind required to establish an element of the offense; or
- (2) The law defining the offense or a law related thereto provides that the state of mind established by such ignorance or mistake constitutes a defense.

Sec. 219—Ignorance or mistake; reduction in grade and class of the offense.

Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and class of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

Sec. 220—Ignorance or mistake of law; belief that conduct not legally prohibited.

In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when:

- (1) He acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:
 - (a) A statute or other enactment;
 - (b) A judicial decision, opinion, or judgment;
 - (c) An administrative order or administrative grant of permission; or
 - (d) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

Sec. 221—Liability for conduct of another.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

- (a) Acting with the state of mind that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
- (b) He is made accountable for the conduct of such other person by this Code or by the law defining the offense; or
- (c) He is an accomplice of such other person in the commission of the offense.

Sec. 222—Liability for conduct of another; complicity.

A person is an accomplice of another person in the commission of an offense if:

- (1) With the intention of promoting or facilitating the commission of the offense, he:
 - (a) Solicits the other person to commit it; or
 - (b) Aids or agrees or attempts to aid the other person in planning or committing it; or
 - (c) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or
- (2) His conduct is expressly declared by law to establish his complicity.

Sec. 223—Liability for conduct of another; complicity with respect to the result.

When causing a particular result is an element of an offense, an accomplice in the conduct causing the result is an accomplice in the commission of that offense, if he acts, with respect to that result, with the state of mind that is sufficient for the commission of the offense.

Sec. 224—Liability for conduct of another; exemption from complicity.

Unless otherwise provided by this Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

- (1) He is a victim of that offense; or
- (2) The offense is so defined that his conduct is inevitably incident to its commission; or
- (3) He terminates his complicity prior to the commission of the offense and:
 - (a) Wholly deprives his complicity of effectiveness in the commission of the offense; or
 - (b) Gives timely warning to the law enforcement authorities or otherwise makes reasonable effort to prevent the commission of the offense.

Sec. 225—Liability for conduct of another; incapacity of defendant; failure to prosecute or convict or immunity of other person.

In any prosecution for an offense in which the liability of the defendant is based on conduct of another person, it is no defense that:

- (1) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on him is inconsistent with the purpose of the provision establishing his incapacity; or
- (2) The other person has not been prosecuted for or convicted of any offense, or has been convicted of a different offense or degree of offense, based upon the conduct in question; or
- (3) The other person has a legal immunity from prosecution based upon the conduct in question.

Sec. 226—Liability for conduct of another; multiple convictions; different degrees.

When, pursuant to any section from section 221 through section 223, two or more persons are liable for an offense which is divided into degrees, each person is guilty of the degree of the offense which is consistent with his own state of mind and with his own accountability for an aggravating fact or circumstance.

Sec. 227—Penal liability of corporations and unincorporated associations.

A corporation or unincorporated association is guilty of an offense when:

- (1) It omits to discharge a specific duty of affirmative performance imposed on corporations or unincorporated associations by law and the omission is prohibited by penal law; or
- (2) The conduct or result specified in the definition of the offense is engaged in, caused, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors of the corporation or by the executive board of the unincorporated association, or by a high managerial agent acting within the scope of his office or employment and in behalf of the corporation or the unincorporated association; or
- (3) The conduct or result specified in the definition of the offense is engaged in or caused by an agent of the corporation or the unincorporated association while acting within the scope of his office or employment and in behalf of the corporation or the unincorporated association and:
 - (a) The offense is a misdemeanor, petty misdemeanor, or violation; or
 - (b) The offense is one defined by a statute which clearly indicates a legislative purpose to impose such criminal liability on a corporation or unincorporated association.

Sec. 228—Liability of persons acting, or under a duty to act, in behalf of corporations or unincorporated associations.

(1) A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(2) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or the unincorporated association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(3) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or of an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and class involved.

Sec. 229—Definitions relating to corporations and unincorporated associations.

As used in sections 227 and 228:

- (1) "Corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program;
- (2) "Agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association.
- (3) "High managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or unincorporated association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or the unincorporated association.

Sec. 230—Intoxication.

(1) Evidence of the intoxication of the defendant shall be admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offense.

(2) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of section 400.

(3) Intoxication which (a) is not self-induced or (b) is pathological is a defense if by reason of such intoxication the defendant at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of law.

(4) In this section:

- (a) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;
- (b) "Self-induced intoxication" means intoxication caused by substances which the defendant knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense;
- (c) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know he is susceptible and which results from a physical abnormality of the defendant.

Sec. 231—Duress.

(1) It is a defense to a penal charge that the defendant engaged in the conduct or caused the result alleged because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this section is unavailable if the defendant recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in

placing himself in such a situation, whenever negligence suffices to establish the requisite state of mind for the offense charged.

(3) It is not a defense that a person acted on the command of his or her spouse, unless he or she acted under such coercion as would establish a defense under this section.

(4) When the conduct of the defendant would otherwise be justifiable under section 302, this section does not preclude the defense of justification.

Sec. 232—Military orders.

It is an affirmative defense to a penal charge that the defendant, in engaging in the conduct or causing the result alleged, which he did not know to be unlawful, did no more than execute an order of his superior in the armed services.

Sec. 233—Consent; general.

In any prosecution, the victim's consent to the conduct alleged, or to the result thereof, is a defense if the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

Sec. 234—Consent to bodily injury.

In any prosecution involving conduct which causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

- (1) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic event or competitive sport; or
- (2) the consent establishes a justification for the conduct under chapter 3 of this Code.

Sec. 235—Ineffective consent.

Unless otherwise provided by this Code or by the law defining the offense, consent does not constitute a defense if:

- (1) It is given by a person who is legally incompetent to authorize the conduct alleged; or
- (2) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; or
- (3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
- (4) It is induced by force, duress or deception.

Sec. 236—De minimis infractions.

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1) (c) of this section without filing a written statement of its reasons.

Sec. 237—Entrapment.

(1) In any prosecution, it is an affirmative defense that the defendant engaged in the prohibited conduct or caused the prohibited result because he was induced or encouraged to do so by a law enforcement officer, or by a person acting in cooperation with a law enforcement officer, who, for the purpose of obtaining evidence of the commission of an offense, either:

- (a) Knowingly made false representations designed to induce the belief that such conduct or result was not prohibited; or
- (b) Employed methods of persuasion or inducement which created a substantial risk that the offense would be committed by persons other than those who are ready to commit it.

(2) The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

CHAPTER 3

GENERAL PRINCIPLES OF JUSTIFICATION

Sec. 300—Definitions relating to justification.

In this chapter, unless a different meaning is plainly required:

- (1) “Believes” means reasonably believes.
- (2) “Force” means any bodily impact, restraint, or confinement, or the threat thereof.
- (3) “Unlawful force” means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.
- (4) “Deadly force” means force which the actor uses with the intent of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.
- (5) “Dwelling” means any building or structure, though movable or tem-

porary, or a portion thereof, which is for the time being a home or place of lodging.

Sec. 301—Justification a defense; civil remedies unaffected.

(1) In any prosecution for an offense, justification, as defined in sections 302 through 309 of this chapter, is a defense.

(2) The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

Sec. 302—Choice of evils.

(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to himself or to another is justifiable provided that:

- (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

Sec. 303—Execution of public duty.

(1) Except as provided in subsection (2), conduct is justifiable when it is required or authorized by:

- (a) The law defining the duties or functions of a public officer or the assistance to be rendered to a public officer in the performance of his duties; or
- (b) The law governing the execution of legal process; or
- (c) The judgment or order of a competent court or tribunal; or
- (d) The law governing the armed services or the lawful conduct of war; or
- (e) Any other provision of law imposing a public duty.

(2) The other sections of this chapter apply to:

- (a) The use of force upon or toward the person of another for any of the purposes dealt with in those sections; and
 - (b) The use of deadly force for any purpose, unless the use of deadly force is otherwise expressly authorized by law or occurs in the lawful conduct of war.
- (3) The justification afforded by subsection (1) applies:
- (a) When the actor believes his conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and
 - (b) When the actor believes his conduct to be required or authorized to

assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

Sec. 304—Use of force in self-protection.

(1) Subject to the provisions of this section and of section 308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

(4) The use of force is not justifiable under this section:

- (a) To resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or
- (b) To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

- (i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or
- (ii) The actor believes that such force is necessary to protect himself against death or serious bodily injury.

(5) The use of deadly force is not justifiable under this section if:

- (a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or
- (b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

- (i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and
- (ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(6) The justification afforded by this section extends to the use of con-

finement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

Sec. 305—Use of force for the protection of other persons.

(1) Subject to the provisions of this section and of section 310, the use of force upon or toward the person of another is justifiable to protect a third person when:

- (a) Under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
- (b) The actor believes that his intervention is necessary for the protection of the other person.

(2) Notwithstanding subsection (1):

- (a) When the actor would be obliged under section 304 to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person; and
- (b) When the person whom the actor seeks to protect would be obliged under section 304 to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain the other's complete safety in that way; and
- (c) Neither the actor nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

Sec. 306—Use of force for the protection of property.

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

- (a) To prevent the commission of criminal trespass or burglary in a building or upon real property in his possession or in the possession of another person for whose protection he acts; or
- (b) To prevent unlawful entry upon real property in his possession or in the possession of another person for whose protection he acts; or
- (c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.

(2) The actor may in the circumstances specified in subsection (1) use such force as he believes is necessary to protect the threatened property, provided that he first requests the person against whom force is used to desist from his interference with the property, unless the actor believes that:

- (a) Such a request would be useless; or
- (b) It would be dangerous to himself or another person to make the request; or
- (c) Substantial harm would be done to the physical condition of the prop-

erty which is sought to be protected before the request could effectively be made.

(3) The use of deadly force for the protection of property is justifiable only if:

- (a) The person against whom the force is used is attempting to dispossess the actor of his dwelling otherwise than under a claim of right to its possession; or
- (b) The person against whom the deadly force is used is attempting to commit felonious property damage, burglary, robbery, or felonious theft and either:
 - (i) Has employed or threatened deadly force against or in the presence of the actor; or
 - (ii) The use of force other than deadly force to prevent the commission of the crime would expose the actor or another person in his presence to substantial danger of serious bodily injury.

(4) The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

- (a) The device is not designed to cause or known to create a substantial risk of causing death or serious bodily injury; and
- (b) The use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the defendant believes them to be; and
- (c) The device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

(5) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he can do so with safety to the property, unless the person confined has been arrested on a charge of crime.

Sec. 307—Use of force in law enforcement.

(1) Subject to the provisions of this section and of section 310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable under this section unless:

- (a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
- (b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(3) The use of deadly force is not justifiable under this section unless:

- (a) The arrest is for a felony; and
- (b) The person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

(c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(d) The actor believes that:

(i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using force which he believes to be immediately necessary to prevent the escape from a detention facility.

(5) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful. A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he believes the arrest is lawful, and the arrest would be lawful if the facts were as he believes them to be.

Sec. 308—Use of force to prevent suicide or the commission of a crime.

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property, or breach of the peace, except that:

(a) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest, or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(b) The use of deadly force is not in any event justifiable under this section unless:

(i) The actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(ii) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to dis-

perse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.

(2) The justification afforded by this section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

Sec. 309—Use of force by persons with special responsibility for care, discipline, or safety of others.

The use of force upon or toward the person of another is justifiable under the following circumstances:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of such parent, guardian, or other responsible person, and:
 - (a) The force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his misconduct; and
 - (b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress, or gross degradation.
- (2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:
 - (a) The actor believes that the force used is necessary to further such special purpose, including maintenance of reasonable discipline in a school, class, or other group, and that the use of such force is consistent with the welfare of the minors; and
 - (b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subsection (1) (b) of this section.
- (3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:
 - (a) The force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and
 - (b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme or unnecessary pain, mental distress, or humiliation.
- (4) The actor is a doctor or other therapist or a person assisting him at his direction, and:
 - (a) The force is used for the purpose of administering a recognized form of treatment which the actor believes to be

- adapted to promoting the physical or mental health of the patient; and
 - (b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
- (5) The actor is a warden or other authorized official of a correctional institution, and:
- (a) He believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and
 - (b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and
 - (c) If deadly force is used, its use is otherwise justifiable under this chapter.
- (6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction, and:
- (a) He believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless his belief in the lawfulness of the order is erroneous and his error is due to ignorance or mistake as to the law defining authority; and
 - (b) If deadly force is used, its use is otherwise justifiable under this chapter.
- (7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier, or in a place where others are assembled, and:
- (a) He believes that the force used is necessary for such purpose; and
 - (b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress.

Sec. 310—Provisions generally applicable to justification.

(1) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 303 to 309 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(2) When the actor is justified under sections 303 to 309 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons.

CHAPTER 4

PENAL RESPONSIBILITY AND FITNESS TO PROCEED

Sec. 400—Physical or mental disease, disorder, or defect excluding penal responsibility.

(1) A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(2) As used in this chapter, the terms “physical or mental disease, disorder, or defect” do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

Sec. 401—Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind.

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is required to establish an element of the offense.

Sec. 402—Physical or mental disease, disorder, or defect excluding responsibility is a defense; form of verdict and judgment when finding of irresponsibility is made.

(1) Physical or mental disease, disorder, or defect excluding responsibility is a defense.

(2) When the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment shall so state.

Sec. 403—Physical or mental disease, disorder, or defect excluding fitness to proceed.

No person who as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

Sec. 404—Examination of defendant with respect to physical or mental disease, disorder, or defect.

(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will

or has become an issue in the case, the court shall immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The dismissal of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint a State-employed physician designated by the director of health from within the department of health and two additional unbiased, qualified physicians to examine and report upon the physical and mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians retained by the defendant be permitted to witness and participate in the examination.

(3) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from physical or mental disease, disorder, or defect and the examiners may, upon approval of the court, secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the physical or mental condition of the defendant;
- (c) An opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged; and
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is required to establish an element of the offense charged.

(5) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(6) The report of the examination, including any supporting documents, shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(7) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify his diagnosis or opinion.

(8) There shall be made accessible to the examiners all existing medical, social, and other pertinent records in the custody of public agencies notwithstanding any other statutes.

(9) The compensation of persons making or assisting in the examination, other than those retained by the non-indigent defendant, who are not undertaking the examination upon designation by the director of health as part of

their normal duties as employees of the State or a county, shall be paid by the State.

Sec. 405—Determination of fitness to proceed.

When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 404, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. When the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the persons who joined in the report or assisted in the examination and to offer evidence upon the issue.

Sec. 406—Effect of finding of unfitness to proceed.

(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in section 407, and the court shall commit him to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment for so long as such unfitness shall endure. If the court is satisfied that the defendant may be released on condition without danger to himself or to the person or property of others, the court shall order his release, which shall continue at the discretion of the court, on such conditions as the court determines necessary. A copy of the report filed pursuant to section 404 shall be attached to the order of commitment or order of conditional release.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or conditional release of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on such conditions as the court determines necessary.

Sec. 407—Special post-commitment or post-conditional release hearing.

(1) At any time after commitment as provided in section 406, the defendant or his counsel or the director of health may apply for a special post-commitment hearing. If the application is made by or on behalf of a defendant not represented by counsel, he shall be afforded a reasonable opportunity to obtain counsel, and if he lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that as an attorney he has reasonable grounds for a good faith belief that his client has, on the facts or the law

or both, a defense to the charge other than physical or mental disease, disorder, or defect excluding responsibility.

(2) If the motion for a special post-commitment hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(3) After the hearing, the court may in an appropriate case quash the indictment or other charge, or find it to be defective or insufficient, or determine that it is not proved beyond a reasonable doubt by the evidence, or otherwise terminate the proceedings on the evidence or the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or conditional release ordered under section 406 and order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on such conditions as the court deems necessary.

Sec. 408—Determination of irresponsibility.

If the report of the examiners filed pursuant to section 404 states that the defendant at the time of the conduct alleged suffered from a physical or mental disease, disorder, or defect which substantially impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested, is satisfied that such impairment was sufficient to exclude responsibility, the court, on motion of the defendant, shall enter judgment of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility.

Sec. 409—Access to defendant by examiners of his choice.

When, notwithstanding the report filed pursuant to section 404, the defendant wishes to be examined by one or more qualified physicians or other experts of his own choice, such examiner or examiners shall be permitted to have reasonable access to the defendant for the purposes of such examination.

Sec. 410—Form of expert testimony regarding physical or mental disease, disorder, or defect.

(1) At the hearing pursuant to sections 405 or 408 or upon the trial, the examiners who reported pursuant to section 404 may be called as witnesses by the prosecution, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiners or any of them were designated by the court or by the director of health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and the defendant. Both the prosecution and the defendant may summon any other qualified physician or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the physical or mental condition of the defendant, as distinguished from the validity of the procedure followed

by, or the general scientific propositions stated by, another witness.

(2) When an examiner testifies on the issue of the defendant's fitness to proceed, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the physical or mental condition of the defendant, and his opinion of the extent, if any, to which the capacity of the defendant to understand the proceedings against him or to assist in his own defense is impaired as a result of physical or mental disease, disorder, or defect.

(3) When an examiner testifies on the issue of the defendant's responsibility for conduct alleged or the issue of the defendant's capacity to have a particular state of mind which is necessary to establish an element of the offense charged, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the physical or mental condition of the defendant at the time of the conduct alleged, and his opinion of the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is necessary to establish an element of the offense charged was impaired as a result of physical or mental disease, disorder, or defect at that time.

(4) When an examiner testifies, he shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

Sec. 411—Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.

(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court shall, on the basis of the report made pursuant to section 404, if uncontested, or the medical evidence given at the trial or at a separate hearing, make an order as follows:

- (a) The court shall order him to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant presents a risk of danger to himself or the person or property of others and that he is not a proper subject for conditional release; or
- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that he presents a danger to himself or the person or property of others, but that he can be controlled adequately and given proper care, supervision, and treatment if he is released on condition; or
- (c) The court shall order him discharged from custody if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect, or, if so affected, that he no longer presents a danger to himself or the person or property of others and is not in need of care, supervision, or treatment.

(2) The court shall, upon its own motion or on the motion of the prosecuting attorney or the defendant, order a separate post-acquittal hearing for the

purpose of taking evidence on the issue of the risk of danger which the defendant presents to himself or to the person or property of others.

(3) When ordering such a hearing the court shall appoint a state-employed physician designated by the director of health from within the department of health plus two additional unbiased, qualified physicians, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the defendant and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, as to his physical and mental condition. To facilitate such examination and the proceedings thereon, the court may cause the defendant, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404 (3), (4), (a) and (b), (6), (7), (8) and (9).

(4) Whether the court's order under subsection (1) is made on the basis of the medical evidence given at the trial or on the basis of the report made pursuant to section 404 or the medical evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant may not safely be discharged and that he should be either committed or conditionally released as provided in subsection (1).

Sec. 412—Committed person; application for conditional release or discharge; by the director of health; by the person.

(1) After the expiration of at least ninety days following the order of commitment pursuant to section 411, if the director of health is of the opinion that the person committed to his custody may be released on condition or discharged without danger to himself or to the person or property of others, he shall make application for the discharge or conditional release of such person in a report to the court by which such person was committed and shall transmit a copy of the application and report to the prosecuting attorney of the county from which the defendant was committed. The defendant shall be given notice of such application.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 411, the person committed may apply to the court by which he was committed for an order of discharge or conditional release upon the ground that the same may be ordered without danger to himself or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the defendant was committed. If the determination of the court is adverse to the application, such person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for his discharge or conditional release.

Sec. 413—Conditional release; application for modification or discharge; termination of conditional release and commitment.

(1) Any person released on condition pursuant to section 411 may apply to the court ordering the conditional release for discharge from or modification

of the order granting conditional release on the ground that he may be discharged or the order modified without danger to himself or to the person or property of others. The applicant shall be accompanied by a supporting affidavit of a qualified physician. A copy of the application and affidavit shall be transmitted to the prosecuting attorney of the county in which the person is confined and to any persons supervising his release and the hearing on the application shall be held following notice to said persons. If the determination of the court is adverse to the application, such person shall not be permitted to file further application until one year has elapsed from the date of any preceding hearing on an application for modification of conditions of release or for discharge.

(2) If, within five years after the order pursuant to section 411 granting conditional release, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled or that for the safety of such person or for the safety of the person or property of others his conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 412.

Sec. 414—Procedure upon application for discharge, conditional release, or modification of conditions of release.

Upon filing of an application pursuant to section 412 for discharge or conditional release, or upon the filing of an application pursuant to section 413 for discharge or for modification of conditions of release, the court shall appoint a State-employed physician designated by the director of health from within the department of health and two additional unbiased, qualified physicians, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the committed or conditionally released person and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his physical and mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians retained by the person be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404(3), (4) (a) and (b), (6), (7), (8), and (9).

Sec. 415—Disposition of application for discharge, conditional release, or modification of conditions of release.

If the court is satisfied by the report filed pursuant to section 414, and such testimony of the reporting examiners as the court deems necessary, that the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others, the court shall grant the application and order the relief. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged

or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the State to prove that the person may not safely be released on the conditions applied for or discharged. According to the determination of the court upon the hearing, the person shall thereupon be discharged, or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 412.

Sec. 416—Statements for purposes of examination or treatment inadmissible except on issue of physical or mental condition.

A statement made by a person subjected to examination or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against him in any penal proceeding on any issue other than that of his physical or mental condition, but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt of the offense charged.

Sec. 417—Use of out-of-state institutions.

The term "appropriate institution" includes any institution within or without this State to which the defendant may be eligible for admission and treatment for physical or mental disease, disorder, or defect.

Sec. 418—Immaturity excluding penal conviction; transfer of proceedings to family court.

(1) A person shall not be tried for or convicted of an offense if:

(a) At the time of the conduct alleged he was less than 16 years of age, in which case the family court shall have exclusive original jurisdiction; or

(b) At the time of the conduct alleged he was 16 or 17 years of age, in which case the family court shall have exclusive original jurisdiction, unless the family court has entered an order waiving jurisdiction and consenting to the institution of penal proceedings against him.

(2) No court shall have jurisdiction to try or convict a person of an offense if penal proceedings against him are barred by subsection (1). When it appears that a person charged with the commission of an offense may be of such an age that penal proceedings may be barred under subsection (1), the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the penal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the family court, and the case, including all papers and processes relating thereto, shall be transferred.

**CHAPTER 5
INCHOATE CRIMES
PART 1. CRIMINAL ATTEMPT**

Sec. 500—Criminal attempt.

(1) A person is guilty of an attempt to commit a crime if he:

- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
- (b) Intentionally engages in conduct which, under the circumstances as he believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

Sec. 501—Criminal attempt; attempting to aid another.

(1) A person who engages in conduct intended to aid another to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided his conduct would establish his complicity under sections 222 through 226 if the crime were committed or attempted by the other person.

(2) It is not a defense to a prosecution under this section that under the circumstances it was impossible for the defendant to aid the other person in the commission of the offense, provided he could have done so had the circumstances been as he believed them to be.

Sec. 502—Grading of criminal attempt.

An attempt to commit a crime is an offense of the same class and grade as the most serious offense which is attempted.

PART II. CRIMINAL SOLICITATION

Sec. 510—Criminal solicitation.

(1) A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, he commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of an offense or to engage in conduct which would be sufficient to establish complicity in the specified conduct or result.

(2) It is immaterial under subsection (1) that the defendant fails to communicate with the person he solicits if his conduct was designed to effect such communication.

Sec. 511—Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

(1) A person shall not be liable under section 510 for criminal solicitation of another if under sections 224(1) and (2) and 225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 510 that the person solicited could not be guilty of committing the crime because:

- (a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited;
- (b) He is penally responsible or has an immunity to prosecution or conviction for the commission of the crime;
- (c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or
- (d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 510 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.

Sec. 512—Grading of criminal solicitation.

Criminal solicitation is an offense one class or grade, as the case may be, less than the offense solicited.

PART III. CRIMINAL CONSPIRACY

Sec. 520—Criminal Conspiracy.

A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime:

- (1) He agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and
- (2) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

Sec. 521—Scope of conspiratorial relationship.

If a person guilty of criminal conspiracy, as defined in section 520, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit the crime with such other person or persons, whether or not he knows their identity.

Sec. 522—Conspiracy with multiple criminal objectives.

If a person conspires to commit a number of crimes, he is guilty of only one conspiracy if the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

Sec. 523—Immunity, irresponsibility, or incapacity of a party to criminal conspiracy.

(1) A person shall not be liable under section 520 for criminal conspiracy if under sections 224(1) and (2) and 225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 520 that a person

with whom the defendant conspires could not be guilty of committing the crime because:

- (a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense;
 - (b) He is penally irresponsible or has an immunity to prosecution or conviction for the commission of the crime;
 - (c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or
 - (d) He does not have the state of mind sufficient for the commission of the offense in question.
- (3) It is not a defense to a prosecution under section 520 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.

Sec. 524—Venue in criminal conspiracy prosecutions.

For purposes of determining venue in a prosecution for criminal conspiracy, a criminal conspiracy is committed in any circuit in which the defendant enters into the conspiracy and in any circuit in which the defendant or person with whom he conspires does an overt act.

Sec. 525—Duration of conspiracy.

For purposes of section 108, the following apply:

- (1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired.
- (2) It is prima facie evidence that the agreement has been abandoned if neither the defendant nor anyone with whom he conspired did any overt act in pursuance of the conspiracy during the applicable period of limitation.
- (3) If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law-enforcement authorities of the existence of the conspiracy and of his participation therein.

Sec. 526—Grading of criminal conspiracy.

- (1) A conspiracy to commit a class A felony is a class B felony.
- (2) Except as provided in subsection (1), conspiracy to commit a crime is an offense of the same class and grade as the most serious offense which is an object of the conspiracy.

PART IV. GENERAL PROVISIONS RELATING TO INCHOATE OFFENSES

Sec. 530—Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

- (1) In a prosecution for criminal attempt, it is an affirmative defense

that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt.

(2) In a prosecution for criminal solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a complete and voluntary renunciation of his criminal intent:

- (a) First notified the person solicited of his renunciation, and
- (b) Gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(3) In a prosecution for criminal conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

(4) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

- (a) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or
- (b) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(5) A warning to law-enforcement authorities is not "timely" within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not "reasonable" within the meaning of this section unless the defendant, under reasonably foreseeable circumstances, would have prevented the conduct or result.

Sec. 531—Multiple convictions.

A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or culminate in the commission of the same substantive crime.

CHAPTER 6

DISPOSITION OF CONVICTED DEFENDANTS

PART I. PRE-SENTENCE INVESTIGATION AND REPORT, AUTHORIZED DISPOSITION, AND CLASSES OF FELONIES

Sec. 600—Sentence in accordance with this chapter.

No sentence shall be imposed or suspended otherwise than in accordance with this chapter.

Sec. 601—Pre-sentence diagnosis and report.

- (1) The court shall order a pre-sentence correctional diagnosis of the

defendant and accord due consideration to a written report of the diagnosis before suspending or imposing sentence where:

- (a) The defendant has been convicted of a felony; or
- (b) The defendant is less than twenty-two years of age and has been convicted of a crime.
- (2) The court may order a pre-sentence diagnosis in any other case.
- (3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney.

Sec. 602—Contents of pre-sentence diagnosis and report.

The pre-sentence diagnosis and report shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included.

Sec. 603—Pre-sentence psychiatric and medical examination.

Before suspending or imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to psychiatric and other medical observation and examination for a period not exceeding sixty days or such longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or hospital and, in addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists or other physicians to make the examination. The report of the examination shall be submitted to the court.

Sec. 604—Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department of social services.

- (1) Before suspending or imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of his disposition.
- (2) The court shall furnish to the defendant or his counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychiatric or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them.
- (3) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychiatric or other medical examination shall be transmitted forthwith to the department of social services and housing or, when the defendant is committed to the custody of a specific institution, to such institution.

Sec. 605—Authorized disposition of convicted defendants.

- (1) Except as provided in section 606 and subject to the applicable provisions of this Code, the court may suspend the imposition of sentence on a person who has been convicted of a crime, may order him to be committed

in lieu of sentence in accordance with section 607, or may sentence him as follows:

- (a) To be placed on probation as authorized by part II of this chapter; or
- (b) To pay a fine authorized by part III of this chapter; or
- (c) To be imprisoned for a term authorized by part IV of this chapter; or
- (d) To pay a fine and to probation or to pay a fine and to imprisonment, but not to probation and imprisonment, except as authorized by part II of this chapter.

(2) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine authorized by part III of this chapter.

(3) The court shall sentence a corporation or unincorporated association which has been convicted of an offense in accordance with section 608.

(4) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

Sec. 606—Sentence for offense of murder.

The court shall sentence a person who has been convicted of murder to an indeterminate term of imprisonment. In such cases the court shall impose the maximum length of imprisonment as follows:

- (a) Life imprisonment without possibility of parole in the murder of:
 - (i) A peace officer while in the performance of his duties, or
 - (ii) A person known by the defendant to be a witness in a murder prosecution, or
 - (iii) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this subsection, or
 - (iv) A person while the defendant was imprisoned.

As part of such sentence the court shall order the director of the department of social services and housing and the board of paroles and pardons to prepare an application for the governor to commute the sentence to life with parole at the end of twenty years of imprisonment.

- (b) Life imprisonment with possibility of parole or twenty years as the court determines, in all other cases. The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 607—Civil commitment in lieu of prosecution or of sentence.

(1) When a person prosecuted for a class C felony, misdemeanor, or petty misdemeanor is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality and the person is subject by law to involuntary hospitalization for medical, psychiatric, or other rehabilitative treatment, the court may order such hospitalization and dismiss the prosecution. The order of involuntary hospitalization may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(2) The court shall not make an order under subsection (1) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

Sec. 608—Penalties against corporations and unincorporated associations; forfeiture of corporate charter or revocation of certificate authorizing foreign corporation to do business in the State.

(1) The court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by part III of this chapter.

(2) When a corporation is convicted of a crime or a high managerial agent of a corporation, as defined in section 230(3), is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may order the charter of a corporation organized under the laws of this State forfeited or the certificate of a foreign corporation authorizing it to do business in this State revoked upon finding:

- (a) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct, and
- (b) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

(3) The proceedings authorized by subsection (2) shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of a corporation or the revocation of the certificate authorizing a foreign corporation to conduct business in this State. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.

Sec. 609—Resentence for the same offense or for offense based on the same conduct not to be more severe than prior sentence.

When a conviction or sentence is set aside on direct or collateral attack, the court shall not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence.

Sec. 610—Classes of felonies.

(1) Felonies defined by this Code are classified, for the purpose of sentence, into three classes, as follows:

- (a) Class A felonies;
- (b) Class B felonies; and
- (c) Class C felonies.

A felony is a class A, class B, or class C felony when it is so designated by this Code. A crime declared to be a felony, without specification of class, is a class C felony.

(2) Notwithstanding any other provision of law, a felony defined by any statute of this State other than this Code shall constitute for the purpose of sentence a class C felony.

PART II. SUSPENSION OF SENTENCE AND PROBATION

Sec. 620—Sentence of imprisonment withheld unless imprisonment is necessary.

The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that:

- (1) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (2) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (3) A lesser sentence will depreciate the seriousness of the defendant's crime.

Sec. 621—Grounds favoring withholding sentence of imprisonment.

The following grounds, while not controlling the discretion of the court, may be accorded weight in favor of withholding sentence of imprisonment:

- (1) The defendant's criminal conduct neither caused nor threatened serious harm;
- (2) The defendant did not contemplate that his criminal conduct would cause or threaten serious harm;
- (3) The defendant acted under a strong provocation;
- (4) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- (5) The victim of the defendant's criminal conduct induced or facilitated its commission;
- (6) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;
- (7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
- (8) The defendant's criminal conduct was the result of circumstances unlikely to recur;
- (9) The character and attitudes of the defendant indicate that he is unlikely to commit another crime;
- (10) The defendant is particularly likely to respond affirmatively to probationary treatment;
- (11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents.

Sec. 622—Criteria for placing defendant on probation.

When a person who has been convicted of a crime is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide.

Sec. 623—Period of suspension of sentence or probation.

When the court has suspended sentence or has sentenced a defendant to

be placed on probation, the period of the suspension or probation shall be five years upon conviction of a felony, one year upon conviction of a misdemeanor, or six months upon conviction of a petty misdemeanor, unless the defendant is sooner discharged by order of the court. The court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time.

Sec. 624—Conditions of suspension of sentence or probation.

(1) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so.

(2) The court, as a condition of its order, may require the defendant:

- (a) To meet his family responsibilities;
- (b) To devote himself to an employment or occupation;
- (c) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
- (d) To pursue a prescribed secular course of study or vocational training;
- (e) To attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- (f) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (g) To have in his possession no firearms or other dangerous instruments unless granted written permission by the court;
- (h) To make restitution of the fruits of his crimes or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;
- (i) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;
- (j) To report as directed to the court or the probation officer and to permit the officer to visit his home;
- (k) To post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
- (l) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

(3) When the court sentences a person who has been convicted of a felony or misdemeanor to be placed on probation, it may require him to serve a term of imprisonment not exceeding six months as an additional condition of its order. The court may order that the term of imprisonment be served intermittently. The term of imprisonment imposed hereunder shall be treated as part of the term of probation, and in the event of a sentence of imprisonment upon the revocation of the probation, the term of imprisonment served hereunder shall not be credited toward service of such subsequent sentence.

(4) The defendant shall be given a written copy of any requirements

imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.

Sec. 625 Modification of conditions.

During a period of probation or suspension of sentence, the court, on application of a probation officer or of the defendant, or on its own motion, may modify the requirements imposed on the defendant or add further requirements authorized by section 624.

Sec. 626 Summons or arrest of defendant under suspended sentence or on probation; commitment without bail.

At any time before the discharge of the defendant or the termination of the period of probation or suspension of sentence:

- (1) The court may, in connection with the suspension or probation, summon the defendant to appear before it or may issue a warrant for his arrest;
- (2) A probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest him without a warrant;
- (3) The court, if there is probable cause to believe that the defendant has committed another crime or if he has been held to answer therefor, may commit him without bail, pending a determination of the charge by the court having jurisdiction thereof.

Sec. 627—Notice and hearing on revocation of suspension of sentence or probation, or increasing the conditions thereof.

The court shall not revoke a probation or suspension of sentence or increase the requirements imposed thereby on the defendant except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense, and to be represented by counsel.

Sec. 628—Revocation of probation or suspension of sentence; resentence.

(1) At any time before the discharge of the defendant or the termination of the period of probation or suspension of sentence, the court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or if he has been convicted of another crime, may revoke the suspension or probation and sentence or resentence the defendant, as provided in subsection (2).

(2) When the court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted.

Sec. 629—Calculation of multiple dispositions involving suspension or probation and imprisonment, or multiple terms of suspension or probation.

(1) When the disposition of a defendant involves more than one crime

or a defendant, already under sentence or suspension of sentence, is convicted for another crime committed prior to the former disposition:

- (a) The court shall not sentence to probation a defendant who is under sentence of imprisonment with more than six months to run, or impose a sentence of probation and a sentence of imprisonment except as authorized by section 624(3); and
 - (b) Multiple periods of suspension or probation shall run concurrently from the date of the first such disposition; and
 - (c) When a sentence of imprisonment is imposed for an indeterminate term, the service of such sentence shall satisfy a suspended sentence on another count or a prior suspended sentence or a prior sentence to probation; and
 - (d) When a sentence of imprisonment is imposed for a definite term, the period of a suspended sentence on another count or a prior suspended sentence or prior sentence to probation shall run during the period of such imprisonment.
- (2) When a defendant is convicted of a crime committed which under suspension of sentence or on probation and such suspension or probation is not revoked:
- (a) If the defendant is sentenced to imprisonment for an indeterminate term, the service of such sentence shall satisfy the prior suspended sentence or sentence to probation; and
 - (b) If the defendant is sentenced to imprisonment for a definite term, the period of the suspension or probation shall not run during the period of such imprisonment; and
 - (c) If sentence is suspended or the defendant is sentenced to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the court determines at the time of disposition.

Sec. 630—Discharge of defendant.

Upon the termination of the period of probation or suspension of sentence or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court.

Sec. 631—Probation or suspension of sentence is a final judgment for other purposes.

A judgment suspending sentence or sentencing a defendant to be placed on probation shall be deemed tentative, to the extent provided in this chapter, but for all other purposes shall constitute a final judgment.

PART III. FINES

Sec. 640—Authorized fines.

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$10,000, when the conviction is of a class A felony or a class B felony;

- (2) \$5,000, when the conviction is of a class C felony;
- (3) \$1,000, when the conviction is of a misdemeanor;
- (4) \$500, when the conviction is of a petty misdemeanor or a violation;
- (5) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
- (6) Any higher or lower amount specifically authorized by statute.

Sec. 641—Criteria for imposing fines.

(1) The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, unless, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices for the protection of the public.

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

- (a) The defendant has derived a pecuniary gain from the crime; or
- (b) The court is of the opinion that a fine is specially adapted to the deterrence of the crime involved or to the correction of the defendant.
- (3) The court shall not sentence a defendant to pay a fine unless:
 - (a) The defendant is or will be able to pay the fine; and
 - (b) The fine will not prevent the defendant from making restitution or reparation to the victim of the offense.

(4) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

Sec. 642—Time and method of payment.

(1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith.

(2) When a defendant sentenced to pay a fine is also sentenced to probation, the court may make the payment of the fine a condition of probation.

Sec. 643—Disposition of funds.

(1) The defendant shall pay a fine or any installment thereof to the clerk of the sentencing court. In the event of default in payment, the clerk shall notify the prosecuting attorney.

(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State.

Sec. 644—Consequences of non-payment; imprisonment for contumacious non-payment; summary collection.

(1) When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the defendant shows that his de-

fault was not attributable to an intentional refusal to obey the order of the court, or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was contumacious and may order him committed until the fine or a specified part thereof is paid.

(2) When a fine is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure so to do may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for non-payment of fine shall be specified in the order of commitment, and shall not exceed one day for each five dollars of the fine, thirty days if the fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for non-payment of a fine shall be given credit toward payment for each day of imprisonment, at the rate of five dollars per day.

(4) If it appears that the defendant's default in the payment of a fine is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or the unpaid portion thereof in whole or in part.

(5) Upon any contumacious default in the payment of a fine or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt. The levy of execution for the collection of a fine shall not discharge a defendant committed to imprisonment for non-payment of the fine until the amount of the fine has actually been collected or accounted for under subsection (3).

Sec. 645—Revocation of fine.

(1) A defendant who has been sentenced to pay a fine and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for a revocation of the fine or of any unpaid portion thereof.

(2) If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or the unpaid portion thereof in whole or in part.

PART IV. IMPRISONMENT

Sec. 660—Sentence of imprisonment for felony; ordinary terms.

A person who has been convicted of a felony may be sentenced to an indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(1) For a class A felony—20 years;

- (2) For a class B felony—10 years; and
- (3) For a class C felony—5 years.

The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 661—Sentence of imprisonment for felony; extended terms.

In the cases designated in section 662, a person who has been convicted of a felony may be sentenced to an extended indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

- (1) For a class A felony—life;
- (2) For a class B felony—20 years; and
- (3) For a class C felony—10 years.

The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 662—Criteria for sentence of extended term of imprisonment for felony.

The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.

- (1) Persistent offender. The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant is 22 years of age or older and has previously been convicted of two felonies committed at different times when he was 18 years of age or older.
- (2) Professional criminal. The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant is 22 years of age or older and:
 - (a) The circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) Dangerous person. The defendant is a dangerous person whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusion that his criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such condition makes him a serious danger to others.
- (4) Multiple offender. The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an ex-

tended term is warranted. The court shall not make such a finding unless:

- (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
- (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed 40 years if the extended term imposed is for a class A felony.

Sec. 663—Sentence of imprisonment for misdemeanor and petty misdemeanor.

A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed one year in the case of a misdemeanor or 30 days in the case of a petty misdemeanor.

Sec. 664—Procedure on imposing sentence of imprisonment for an extended term.

The court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the provisions of section 604, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

Sec. 665—Former conviction in another jurisdiction.

For the purposes of subsection (1) of section 662, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction.

Sec. 666—Definition and proof of conviction.

(1) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of sections 662 and 665, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

(2) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction, or imprisonment, that reasonably satisfies the court that the defendant was convicted.

Sec. 667—Young adult defendants.

(1) Defined. A young adult defendant is a person convicted of a crime who, at the time of sentencing, is 16 years of age or older but less than 22 years of age.

(2) Specialized correctional treatment. A young adult defendant who is sentenced to a term of imprisonment which may exceed 30 days may be committed by the court to the custody of the department of social services and

housing, and shall receive, as far as practicable, such special and individualized correctional and rehabilitative treatment as may be appropriate to his needs.

(3) Special term. A young adult defendant convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this chapter, be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for his correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment which shall be four years, regardless of the degree of the felony involved. The minimum length of imprisonment shall be set by the board of paroles and pardons in accordance with section 669.

Sec. 668—Concurrent and consecutive terms of imprisonment.

(1) Except as provided in subsection (2), when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall be served concurrently.

(2) If a person who is imprisoned in a correctional institution is convicted of a crime committed while he is imprisoned or during an escape from imprisonment, the maximum term of imprisonment authorized for the crime committed during imprisonment or during an escape from imprisonment may be added to the portion of the term which remained unserved at the time of the commission of the crime. For purposes of this section, escape is a crime committed during imprisonment.

Sec. 669—Procedure for determining minimum term of imprisonment.

(1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the board of paroles and pardons shall, as soon as practicable but no later than six months after commitment to the custody of director of the department of social services and housing hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.

(2) Before holding the hearing, the board shall obtain a complete report regarding the prisoner's life before entering the institution and a full report of his progress in the institution. The report shall be a complete personality evaluation for the purpose of determining his degree of propensity toward criminal activity.

(3) The prisoner shall be given reasonable notice of the hearing under subsection (1) and shall be permitted to be heard by the board on the issue of the minimum term to be served before he becomes eligible for parole. In addition, he shall:

- (a) Be permitted to consult with any persons he reasonably desires, including his own legal counsel, in preparing for the hearing;
- (b) Be permitted to be represented and assisted by counsel at the hearing;
- (c) Have counsel appointed to represent and assist him if he so requests and cannot afford to retain counsel; and

(d) Be informed of his rights under (a), (b), and (c).

(4) The board in its discretion may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until he has a record of continuous exemplary behavior.

(5) The board in its discretion may reduce the minimum term fixed by its order pursuant to subsection (1).

(6) A verbatim stenographic or mechanical record of the hearing shall be made and preserved in transcribed or untranscribed form.

Sec. 670—Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.

(1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the board of paroles and pardons pursuant to section 669. If parole is not granted at that time, additional hearings shall be held at 12-month intervals or less until parole is granted or the maximum period of imprisonment expires.

(2) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of his parole hearing and shall prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the parole board. In addition, he shall:

(a) Be permitted to consult with any persons whose assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the parole board;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist him if he so requests and cannot afford to retain counsel; and

(d) Be informed of his rights under (a), (b), and (c).

(3) Board's decision. The board of paroles and pardons shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. If the board denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The board may in its discretion order a reconsideration or rehearing of the case at any time.

(4) Release upon expiration of maximum term. If the board of paroles and pardons fixes no earlier release date, a prisoner's release shall become mandatory at the expiration of his maximum term of imprisonment.

(5) Sentence of imprisonment includes separate parole term; length of parole term. A sentence to an indeterminate term of imprisonment under this chapter includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the prisoner's first conditional release on parole. The maximum of such term shall be ten years. The minimum length

of the term of parole or recommitment shall be determined by the board of paroles and pardons.

(6) Revocation hearing. When a parolee has been recommitment, the board of paroles and pardons shall hold a hearing within 60 days after his return to determine whether his parole should be revoked. The parolee shall have reasonable notice of the grounds alleged for revocation of his parole. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing. In addition, the parolee shall have, with respect to the revocation hearing, those rights set forth in subsection (2) (a), (2) (b), (2) (c), and (2) (d). A record of the hearing shall be made and preserved as provided in subsection (3).

(7) Length of recommitment and reparole after revocation of parole. If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the board of paroles and pardons but shall not exceed in aggregate length the unserved balance of the maximum parole term provided by subsection (5).

(8) Final unconditional release. When his maximum parole term has expired or he has been sooner discharged from parole, a prisoner shall be deemed to have served his sentence and shall be released unconditionally.

Sec. 671—Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.

(1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following his arrest for the crime for which sentence is imposed, such period of detention following his arrest shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment.

(2) When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

Sec. 672—Place of imprisonment.

(1) When a person is sentenced to imprisonment for an indeterminate term, the court shall commit him to the custody of the department of social services and housing for the term of his sentence and until released in accordance with law. The court shall determine the initial place of confinement and the director shall determine the proper program of redirection and any subsequent place of confinement best suited to meet the individual needs of the committed person.

(2) When a person is sentenced to imprisonment for a definite term, the court shall designate the institution or agency to which he is committed for the term of his sentence and until released in accordance with the law.

CHAPTER 7

OFFENSES AGAINST THE PERSON

PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST THE PERSON

Sec. 700—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

- (1) “Person” means a human being who has been born and is alive;
- (2) “Bodily injury” means physical pain, illness, or any impairment of physical condition;
- (3) “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;
- (4) “Dangerous instrument” means any firearm, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury;
- (5) “Restrain” means to restrict a person’s movement in such a manner as to interfere substantially with his liberty:
 - (a) By means of force, threat, or deception; or
 - (b) If the person is under the age of 18 or incompetent, without the consent of the relative, person, or institution having lawful custody of him;
- (6) “Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian;
- (7) “Sexual intercourse” means any act of coitus between male and female, but does not include deviate sexual intercourse; it occurs upon any penetration however slight and emission is not required;
- (8) “Deviate sexual intercourse” means any act of sexual gratification:
 - (a) Between persons not married to each other involving the sex organs of one and the mouth or anus of the other; or
 - (b) Between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.
- (9) “Sexual contact” means any touching of the sexual or other intimate parts of a person not married to the actor, done with the intent of gratifying the sexual desire of either party;
- (10) “Female” means any female person to whom the actor is not married;
- (11) “Married” includes persons legally married, but does not include spouses living apart under a judicial decree;

- (12) "Forcible compulsion" means physical force that overcomes earnest resistance; or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person, or in fear that he or another person will immediately be kidnapped;
- (13) "Mentally defective" means a person suffering from a disease, disorder, or defect which renders him incapable of appraising the nature of his conduct;
- (14) "Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a substance administered to him without his consent;
- (15) "Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

PART II. CRIMINAL HOMICIDE

Sec. 701—Murder.

(1) Except as provided in section 702, a person commits the offense of murder if he intentionally or knowingly causes the death of another person.

(2) Murder is a class A felony for which the defendant shall be sentenced to imprisonment as provided in section 606.

Sec. 702—Manslaughter.

(1) A person commits the offense of manslaughter if:

- (a) he recklessly causes the death of another person; or
- (b) he intentionally causes another person to commit suicide.

(2) In a prosecution for murder it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbances for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be.

(3) Manslaughter is a class B felony.

Sec. 703—Negligent homicide in the first degree.

(1) A person is guilty of the offense of negligent homicide in the first degree if he causes the death of another person by the operation of a vehicle in a negligent manner.

(2) Negligent homicide in the first degree is a class C felony.

Sec. 704—Negligent homicide in the second degree.

(1) A person is guilty of the offense of negligent homicide in the second degree if he causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) "Simple negligence" as used in this section:

- (a) A person acts with simple negligence with respect to his conduct when he should be aware of a risk that he engages in such conduct.

- (b) A person acts with simple negligence with respect to attendant circumstances when he should be aware of a risk that such circumstances exist.
- (c) A person acts with simple negligence with respect to a result of his conduct when he should be aware of a risk that his conduct will cause such a result.
- (d) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.
- (3) Negligent homicide in the second degree is a misdemeanor.

PART III. CRIMINAL ASSAULTS AND RELATED OFFENSES

Sec. 710—Assault in the first degree.

- (1) A person commits the offense of assault in the first degree if he intentionally or knowingly causes serious bodily injury to another person.
- (2) Assault in the first degree is a class B felony.

Sec. 711—Assault in the second degree.

- (1) A person commits the offense of assault in the second degree if:
 - (a) He intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
 - (b) He recklessly causes serious bodily injury to another person with a dangerous instrument.
- (2) Assault in the second degree is a class C felony.

Sec. 712—Assault in the third degree.

- (1) A person commits the offense of assault in the third degree if he:
 - (a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or
 - (b) Negligently causes bodily injury to another person with a dangerous instrument.
- (2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

Sec. 713—Reckless endangering in the first degree.

- (1) A person commits the offense of reckless endangering in the first degree if he employs widely dangerous means in a manner which recklessly places another person in danger of death or serious bodily injury.
- (2) Reckless endangering in the first degree is a class C felony.

Sec. 714—Reckless endangering in the second degree.

- (1) A person commits the offense of reckless endangering in the second degree if he engages in conduct which recklessly places another person in danger of death or serious bodily injury.
- (2) Reckless endangering in the second degree is a misdemeanor.

Sec. 715—Terroristic threatening.

(1) A person commits the offense of terroristic threatening if he threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another:

- (a) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or
 - (b) with intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.
- (2) Terroristic threatening is a misdemeanor.

**PART IV. KIDNAPPING AND RELATED OFFENSES;
CRIMINAL COERCION**

Sec. 720—Kidnapping.

(1) A person commits the offense of kidnapping if he intentionally restrains another person with intent to:

- (a) Hold him for ransom or reward; or
- (b) Use him as a shield or hostage; or
- (c) Facilitate the commission of a felony or flight thereafter; or
- (d) Inflict bodily injury upon him or subject him to a sexual offense; or
- (e) Terrorize him or a third person; or
- (f) Interfere with the performance of any governmental or political function.

(2) Except as provided in subsection (3), kidnapping is a class A felony.

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious bodily injury, in a safe place prior to trial.

Sec. 721—Unlawful imprisonment in the first degree.

(1) A person commits the offense of unlawful imprisonment in the first degree if he knowingly restrains another person:

- (a) Under circumstances which expose the person to the risk of serious bodily injury; or
 - (b) In a condition of involuntary servitude.
- (2) Unlawful imprisonment in the first degree is a class C felony.

Sec. 722—Unlawful imprisonment in the second degree.

(1) A person commits the offense of unlawful imprisonment in the second degree if he knowingly restrains another person.

(2) In any prosecution under this section it is an affirmative defense, that (a) the person restrained was less than 18 years old, (b) the defendant was a relative of the victim, and (c) his sole purpose was to assume custody over the victim. In that case, the liability of the defendant, if any, is governed by section 723 and he may be convicted under section 723 although charged under this section.

(3) In any prosecution under this section it is an affirmative defense,

that the person restrained (a) was on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise; (b) was restrained in a reasonable manner and for not more than a reasonable time; (c) was restrained to permit such investigation or questioning by police officer or by the owner of the retail mercantile establishment, his authorized employee or agent; and (d) that such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises.

(4) Unlawful imprisonment in the second degree is a misdemeanor.

Sec. 723—Custodial interference.

(1) A person commits the offense of custodial interference if:

- (a) Not being a relative of the person, he knowingly takes or entices a person less than 18 years old from his lawful custodian, knowing that he has no right to do so; or
- (b) He knowingly takes or entices from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution.

(2) Custodial interference is a misdemeanor.

Sec. 724—Criminal coercion.

(1) A person commits the offense of criminal coercion if he intentionally compels or induces another person to engage in conduct from which he has a legal right to abstain or to abstain from conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the defendant or a third person will:

- (a) Cause bodily injury to any person; or
- (b) Cause damage to property; or
- (c) Commit a penal offense; or
- (d) Accuse any person of an offense or cause a penal charge to be instituted against any person; or
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
- (f) Reveal any information sought to be concealed by the other person; or
- (g) Testify or provide information or withhold testimony or information with respect to any person's legal claim or defense; or
- (h) Take or withhold action as a public servant or cause a public servant to take or withhold such action; or
- (i) Bring about or continue a strike, boycott, or other similar collective action, to obtain an act or omission which is not demanded for the benefit of the group which the defendant purports to represent.

(2) Criminal coercion is a class C felony.

Sec. 725—Defense to criminal coercion.

In a prosecution for criminal coercion based on paragraphs (d), (e), (f), or (h) of section 724(1), it is a defense that the defendant believed the threatened

accusation, penal charge, or exposure to be true, or the proposed action of a public servant justified, and that his sole intention was to compel or induce the victim to take reasonable action to prevent or remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant.

PART V. SEXUAL OFFENSES

Sec. 730—Rape in the first degree.

- (1) A male commits the offense of rape in the first degree if:
 - (a) He intentionally engages in sexual intercourse, by forcible compulsion, with a female and:
 - (i) The female is not, upon the occasion, his voluntary social companion who had within the previous 12 months permitted him sexual contact; or
 - (ii) He recklessly inflicts serious bodily injury upon the female; or
 - (b) He intentionally engages in sexual intercourse with a female who is less than 14 years old and he recklessly inflicts serious bodily injury upon the female.
- (2) Rape in the first degree is a class A felony.

Sec. 731—Rape in the second degree.

- (1) A male commits the offense of rape in the second degree if:
 - (a) He intentionally engages in sexual intercourse by forcible compulsion with a female; or
 - (b) He intentionally engages in sexual intercourse with a female who is less than 14 years old.
- (2) Rape in the second degree is a class B felony.

Sec. 732—Rape in the third degree.

- (1) A male commits the offense of rape in the third degree if he intentionally engages in sexual intercourse with a female who is mentally defective, mentally incapacitated, or physically helpless.
- (2) Rape in the third degree is a class C felony.

Sec. 733—Sodomy in the first degree.

- (1) A person commits the offense of sodomy in the first degree if:
 - (a) He intentionally, by forcible compulsion, engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and:
 - (i) The other person was not, upon the occasion, his voluntary social companion who had within the previous 12 months permitted him sexual contact of the kind involved; or
 - (ii) He recklessly inflicts serious bodily injury upon the other person; or
 - (b) He intentionally engages in deviate sexual intercourse with another person who is less than 14 years old, or causes such person to engage

in deviate sexual intercourse, and he recklessly inflicts serious bodily injury upon the person.

(2) Sodomy in the first degree is a class A felony.

Sec. 734—Sodomy in the second degree.

(1) A person commits the offense of sodomy in the second degree if:

- (a) He intentionally, by forcible compulsion, engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse; or
- (b) He intentionally engages in deviate sexual intercourse with another person who is less than 14 years old.

(2) Sodomy in the second degree is a class B felony.

Sec. 735—Sodomy in the third degree.

(1) A person commits the offense of sodomy in the third degree if he intentionally engages in deviate sexual intercourse with another person, or causes another person to engage in deviate sexual intercourse, and the other person is mentally defective, mentally incapacitated, or physically helpless.

(2) Sodomy in the third degree is a class C felony.

Sec. 736—Sexual abuse in the first degree.

(1) A person commits the offense of sexual abuse in the first degree if:

- (a) He intentionally, by forcible compulsion, has sexual contact with another or causes another to have sexual contact with him; or
- (b) He intentionally has sexual contact with another person who is less than 14 years old or causes such a person to have sexual contact with him.

(2) Sexual abuse in the first degree is a class C felony.

Sec. 737—Sexual abuse in the second degree.

(1) A person commits the offense of sexual abuse in the second degree if:

- (a) He intentionally has sexual contact with another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with him; or
- (b) He intentionally has sexual contact with another person who is under 16 years old and at least 4 years younger than him or causes such a person to have sexual contact with him.

(2) Sexual abuse in the second degree is a misdemeanor.

(3) It is an affirmative defense to a prosecution under subsection (1) (b) that the other person had, prior to the time of the offense charged, engaged promiscuously in sexual relations with others.

Sec. 738—Indecent exposure.

(1) A person commits the offense of indecent exposure if, with intent to arouse or gratify sexual desire of himself or of any person, he exposes his genitals to a person to whom he is not married under circumstances in which his conduct is likely to cause affront or alarm.

(2) Indecent exposure is a petty misdemeanor.

Sec. 739—Knowledge of incapacity to consent; prima facie evidence.

(1) In any prosecution for an offense defined in this part, a victim is deemed incapable of giving effective consent if:

- (a) He or she is less than the age specified in the definition of the offense, or is mentally defective, mentally incapacitated, or physically helpless; and
- (b) The age or condition of the victim is an element of the offense.

Sec. 740—Prompt complaint.

No prosecution may be instituted or maintained under this part unless the alleged offense was brought to the notice of public authority within one month of its occurrence or, where the alleged victim was less than 16 years old or otherwise incompetent to make a complaint, within one month after a parent, guardian, or other competent person specially interested in the victim learns of the offense.

Sec. 741—Incest.

(1) A person commits the offense of incest if he commits an act of sexual intercourse with another who is within the degrees of consanguinity or affinity within which marriage is prohibited.

- (2) Incest is a class C felony.

CHAPTER 8

OFFENSES AGAINST PROPERTY RIGHTS

PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Sec. 800—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required, the following definitions apply.

(1) “Building” includes any structure, vehicle, railway car, aircraft, or watercraft; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(2) “Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property;

(3) “Dealer” means a person in the business of buying and selling goods;

(4) “Deception” occurs when a person knowingly:

(a) creates or confirms another’s impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to dis-

close a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

- (e) promises performance which he does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

(5) "Deprive" means:

- (a) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or
- (b) To dispose of the property so as to make it unlikely that the owner will recover it; or
- (c) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
- (d) To sell, give, pledge, or otherwise transfer any interest in the property; or
- (e) To subject the property to the claim of a person other than the owner.

(6) "Dwelling" means a building which is used or usually used by a person for lodging.

(7) "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

(8) "Extortion" means to obtain, or exert control over, property of another, or to obtain service, by threatening to:

- (a) Cause bodily injury in the future to the person threatened or to any other person; or
- (b) Cause damage to property; or
- (c) Subject the person threatened or any other person to physical confinement or restraint; or

- (d) Commit a penal offense; or
- (e) Accuse some person of an offense or cause a penal charge to be instituted against some person; or
- (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
- (g) Reveal any information sought to be concealed by the person threatened or any other person; or
- (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or
- (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or
- (k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(9) "Financial institution" means a bank, trust company, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(10) "Government" means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(11) "Intent to defraud" means:

- (a) An intent to use deception to injure another's interest which has value; or
- (b) Knowledge by the defendant that he is facilitating an injury to another's interest which has value.

(12) "Obtain" means:

- (a) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and
- (b) When used in relation to services, to secure the performance of services.

(13) "Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

(14) "Premises" includes any building and any real property.

(15) "Property" means any money, personal property, real property,

thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(16) "Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

(17) "Receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

(18) "Services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

(19) "Stolen" means obtained by theft or robbery.

(20) "Unauthorized control over property" means control over property of another which is not authorized by the owner.

(21) "Widely dangerous means" includes explosion, fire, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

Sec. 801—Valuation of property.

Whenever the value of property or services is determinative of the class or grade of an offense, or otherwise relevant to a prosecution, the following shall apply:

- (1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense.
- (2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

- (a) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

- (b) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

- (3) When property has value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding \$50.

- (4) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, the value of property or services shall be prima facie evidence that the defendant believed or knew the property or services to be of that value. When acting recklessly with respect to the value of property or services is sufficient to establish an element of an offense, the value of the property or services shall be prima facie evidence that the defendant acted in reckless disregard of the value.
- (5) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, it is a defense, which reduces the class or grade of the offense to a class or grade of offense consistent with the defendant's state of mind, that the defendant believed the valuation of the property or services to be less. When acting recklessly with respect to the value of property or services is required to establish an element of an offense, it is a defense that the defendant did not recklessly disregard a risk that the property was of the specified value.
- (6) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the class or grade of the offense. Amounts involved in offenses of criminal property damage committed pursuant to one scheme or course of conduct, whether the property damaged be of one person or several persons, may be aggregated in determining the class or grade of the offense.

PART II. BURGLARY AND OTHER OFFENSES OF INTRUSION

Sec. 810—Burglary in the first degree.

(1) A person commits the offense of burglary in the first degree if he intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

- (a) He is armed with a dangerous instrument in the course of committing the offense; or
- (b) He intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or
- (c) He recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(2) An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building or in immediate flight therefrom.

(3) Burglary in the first degree is a class B felony.

Sec. 811—Burglary in the second degree.

(1) A person commits the offense of burglary in the second degree if he intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.

(2) Burglary in the second degree is a class C felony.

Sec. 812—Possession of burglar's tools.

- (1) A person commits the offense of possession of burglar's tools if:
 - (a) He knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking; and
 - (b) He intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of an offense of the nature described in subparagraph (a).
- (2) Possession of burglar's tools is a misdemeanor.

Sec. 813—Criminal trespass in the first degree.

- (1) A person commits the offense of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling.
- (2) Criminal trespass in the first degree is a misdemeanor.

Sec. 814—Criminal trespass in the second degree.

- (1) A person commits the offense of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises which are enclosed in a manner designed to exclude intruders or are fenced.
- (2) Criminal trespass in the second degree is a petty misdemeanor.

Sec. 815—Simple trespass.

- (1) A person commits the offense of simple trespass if he knowingly enters or remains unlawfully in or upon premises.
- (2) Simple trespass is a violation.

Sec. 816—Defense to trespass.

- (1) It is a defense to prosecution for trespass as a violation of Sections 814 and 815 that the defendant entered upon and passed along or over established and well-defined roadways, pathways, or trails leading to public beaches over government lands, whether or not under lease to private persons.

PART III. CRIMINAL DAMAGE TO PROPERTY

Sec. 820—Criminal property damage in the first degree.

- (1) A person commits the offense of criminal property damage in the first degree if he intentionally damages property and thereby recklessly places another person in danger of death or bodily injury.
- (2) Criminal property damage in the first degree is a class B felony.

Sec. 821—Criminal property damage in the second degree.

- (1) A person commits the offense of criminal property damage in the second degree if:
 - (a) He intentionally damages property of another, without his consent, by the use of widely dangerous means; or
 - (b) He intentionally damages the property of another, without his consent, the value of which exceeds \$500.
- (2) Criminal property damage in the second degree is a class C felony.

Sec. 822—Criminal property damage in the third degree.

(1) A person commits the offense of criminal property damage in the third degree if:

- (a) He recklessly damages property of another, without his consent, by the use of widely dangerous means; or
- (b) He intentionally damages the property of another, without his consent, the value of which exceeds \$50.

(2) Criminal property damage in the third degree is a misdemeanor.

Sec. 823—Criminal property damage in the fourth degree.

(1) A person commits the offense of criminal property damage in the fourth degree if he intentionally damages the property of another without his consent.

(2) Criminal property damage in the fourth degree is a petty misdemeanor.

Sec. 824—Failure to control widely dangerous means.

(1) A person commits the offense of failure to control widely dangerous means if, knowing that widely dangerous means are endangering life or property, he negligently fails to take measures to prevent or mitigate the danger and:

- (a) He knows that he is under an official, contractual, or other legal duty to take measures to prevent, control, or mitigate the danger; or
- (b) The means were employed by him or with his assent, or on premises in his custody or control.

(2) Failure to control widely dangerous means is a misdemeanor.

Sec. 825—Criminal tampering; definitions of terms.

In sections 826 and 827:

- (1) To “tamper with” means to interfere improperly with something, meddle with it, or make unwarranted alterations in its existing condition;
- (2) “Utility” means an enterprise which provides gas, electric, steam, water or communications services, and any common carrier; it may be either publicly or privately owned or operated.

Sec. 826—Criminal tampering in the first degree.

(1) A person commits the offense of criminal tampering in the first degree if, and with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he damages or tampers with, without the consent of the utility or institution, its property or facilities and thereby causes substantial interruption or impairment of service.

(2) Criminal tampering in the first degree is a misdemeanor.

Sec. 827—Criminal tampering in the second degree.

(1) A person commits the offense of criminal tampering in the second degree if he intentionally:

- (a) Tampers with property of another person, without his consent, with intent to cause substantial inconvenience to that person or to another; or

(b) Tamper or makes connection with property of a utility without its consent.

(2) Criminal tampering in the second degree is a petty misdemeanor.

Sec. 828—Criminal use of a noxious substance.

(1) A person commits the offense of criminal use of a noxious substance if he knowingly deposits on the premises or in the vehicle of another, without his consent, any stink bomb or device, irritant, or offensive-smelling substance, with the intent to interfere with another's use of the premises or vehicle.

(2) Criminal use of a noxious substance is a petty misdemeanor.

Sec. 829—Criminal littering.

(1) A person commits the offense of criminal littering if he knowingly places, throws, or drops litter on any public or private property or in any public or private waters without the consent of the owner whose interest is affected thereby.

(2) "Litter" means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, or debris of whatever kind or description, and whether or not it is of value.

(3) Criminal littering is a petty misdemeanor.

PART IV. THEFT AND RELATED OFFENSES

Sec. 830—Theft.

A person commits theft if he does any of the following:

- (1) Obtains or exerts unauthorized control over property. He obtains, or exerts control over, the property of another with intent to deprive him of the property.
- (2) Property obtained or control exerted through deception. He obtains, or exerts control over, the property of another by deception with intent to deprive him of the property.
- (3) Extortion. He obtains, or exerts control over, the property of another by extortion with intent to deprive him of the property.
- (4) Appropriation of property. He obtains, or exerts control over, the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, he fails to take reasonable measures to discover and notify him.
- (5) Obtaining services by deception or extortion. He intentionally obtains services, known by him to be available only for compensation, by deception, extortion, false token, or other means to avoid payment for the services. Where compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.

- (6) Diversion of services. Having control over the disposition of services of another to which he is not entitled, he intentionally diverts those services to his own benefit or to the benefit of a person not entitled thereto.
- (7) Failure to make required disposition of funds.
 - (a) He intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from his own property reserved in equivalent amount, and deals with the property as his own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that he knows his legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that he has intentionally dealt with the property as his own.
 - (b) He obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and he intentionally fails to make the payment or disposition at the proper time.
- (8) Receiving stolen property. He intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, he acquires the property for a consideration which he knows is far below its reasonable value.

Sec. 831—Theft in the first degree.

- (1) A person commits the offense of theft in the first degree if he commits theft:
 - (a) By obtaining property from the person of another; or
 - (b) Of property or services the value of which exceeds \$200; or
 - (c) Of a firearm.
- (2) Theft in the first degree is a class C felony.

Sec. 832—Theft in the second degree.

- (1) A person commits the offense of theft in the second degree if he commits theft of property or services the value of which exceeds \$50.
- (2) Theft in the second degree is a misdemeanor.

Sec. 833—Theft in the third degree.

- (1) A person commits the offense of theft in the third degree if he commits theft of property or services.

(2) Theft in the third degree is a petty misdemeanor.

Sec. 834—Defenses: unawareness of ownership; claim of right; household belongings; claim of restitution, indemnification, or compensation; co-interest not a defense.

(1) It is a defense to a prosecution for theft that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that he was entitled to the property or services under a claim of right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for theft by extortion, as defined by paragraphs (e), (f), (g), and (i) of section 800(8), that the property or services obtained by threat of accusation, penal charge, exposure, lawsuit, or other invocation of action by a public servant was believed by the defendant to be due him as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, in circumstances to which the threat relates.

(5) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

Sec. 835—Proof of theft offense.

A charge of an offense of theft in any degree may be proved by evidence that it was committed in any manner that would be theft under section 830, notwithstanding the specification of a different manner in the indictment, information, or other charge, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Sec. 836—Unauthorized operation of propelled vehicle.

(1) A person commits the offense of unauthorized operation of a propelled vehicle if he intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant reasonably believed that the owner would have authorized the use had he known of it.

(4) Unauthorized use of a propelled vehicle is a misdemeanor.

PART V. ROBBERY

Sec. 840—Robbery in the first degree.

(1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

- (a) He attempts to kill another, or intentionally inflicts or attempts to inflict serious bodily injury upon another; or
- (b) He is armed with a dangerous instrument and:
 - (i) He uses force against the person of the owner or any person present with intent to overcome the owner's physical resistance or physical power of resistance; or
 - (ii) He threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

(2) As used in this section, "dangerous instrument" means any firearm, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

(3) Robbery in the first degree is a class A felony.

Sec. 841—Robbery in the second degree.

(1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

- (a) He uses force against the person of the owner or any person present with the intent to overcome the owner's physical resistance or physical power of resistance; or
 - (b) He threatens the imminent use of force against the person of any one who is present with intent to compel acquiescence to the taking of or escaping with the property; or
 - (c) He recklessly inflicts serious bodily injury upon another.
- (2) Robbery in the second degree is a class B felony.

Sec. 842—Robbery; "in the course of committing a theft."

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

PART VI. FORGERY AND RELATED OFFENSES

Sec. 850—Definitions of terms in this part.

In this part, unless a different meaning plainly is required:

- (1) "Written instrument" means:
 - (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
 - (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

- (2) "Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;
- (3) "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (4) "Falsely make," in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;
- (5) "Falsely complete," in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;
- (6) "Falsely alter," in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;
- (7) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (8) "Utter," in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine.

Sec. 851—Forgery in the first degree.

(1) A person commits the offense of forgery in the first degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument, which is or purports to be, or which is calculated to become or to represent if completed:

- (a) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency; or
- (b) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.

(2) Forgery in the first degree is a class B felony.

Sec. 852—Forgery in the second degree.

(1) A person commits the offense of forgery in the second degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract,

assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

(2) Forgery in the second degree is a class C felony.

Sec. 853—Forgery in the third degree.

(1) A person commits the offense of forgery in the third degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument.

(2) Forgery in the third degree is a misdemeanor.

Sec. 854—Criminal possession of a forgery device.

(1) A person commits the offense of criminal possession of a forgery device if:

- (a) He makes or possesses with knowledge of its character any plate, die, or other device, apparatus equipment, or article specifically designed or adapted for use in forging written instruments; or
- (b) He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in forging written instruments with intent to use it himself, or to aid or permit another to use it, for purposes of forgery.

(2) Criminal possession of a forgery device is a class C felony.

Sec. 855—Criminal simulation.

(1) A person commits the offense of criminal simulation if, with intent to defraud, he makes, alters, or utters any object, so that it appears to have an antiquity, rarity, source, or authorship that it does not in fact possess.

(2) In subsection (1), "utter" means to offer, whether accepted or not, an object with representation by acts or words, oral or in writing, relating to its antiquity, rarity, source, or authorship.

(3) Criminal simulation is a misdemeanor.

Sec. 856—Obtaining signature by deception.

(1) A person commits the offense of obtaining a signature by deception if, with intent to defraud, he:

(a) Causes another, by deception, to sign or execute a written instrument; or

(b) Utters the written instrument specified in subparagraph (a).

(2) Obtaining a signature by deception is a misdemeanor.

Sec. 857—Negotiating a worthless negotiable instrument.

(1) A person commits the offense of negotiating a worthless negotiable instrument if he intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(2) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

(a) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or

(b) Payment was refused by the drawee for lack of funds upon presenta-

tion within a reasonable time after negotiation or delivery, as determined according to section 490:3-503 of the Hawaii Revised Statutes, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor, as defined in section 490:3-508 of the Hawaii Revised Statutes.

(3) The definitions of the following terms shall apply to this section:

(a) "Issue" as defined in section 490:3-101 of the Hawaii Revised Statutes;

(b) "Negotiable instrument" as defined in section 490:3-104 of the Hawaii Revised Statutes;

(c) "Negotiation" as defined in section 490:3-202 of the Hawaii Revised Statutes.

(4) Negotiating a worthless negotiable instrument is a misdemeanor.

Sec. 858—Suppressing a testamentary or recordable instrument.

(1) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, he destroys, removes, or conceals any will, codicil, or other testamentary instrument.

(2) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, he destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording.

(3) Each offense defined in this section is a class C felony.

PART VII. BUSINESS AND COMMERCIAL FRAUDS

Sec. 870—Deceptive business practices.

(1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he knowingly or recklessly:

(a) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(c) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(d) Sells or offers for sale adulterated commodities; or

(e) Sells or offers or exposes for sale mislabeled commodities.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) Varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) Represented as being another person's product, though otherwise

labeled accurately as to quality and quantity.

(4) Deceptive business practices is a misdemeanor.

(5) This section does not apply to deceptive business practices, as defined in subsection (1), for which a specific penalty is provided by a statute other than this Code.

Sec. 871—False advertising.

(1) A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, he knowingly or recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the advertised property or services:

(a) At the price equal to or lower than the price offered; or

(b) In a quantity sufficient to meet the reasonably-expected public demand, unless quantity is specifically stated in the advertisement; or

(c) At all.

(3) False advertising is a misdemeanor.

Sec. 872—Falsifying business records.

(1) A person commits the offense of falsifying business records if, with intent to defraud, he:

(a) Makes or causes a false entry in the business records of an enterprise; or

(b) Alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records of an enterprise; or

(c) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law, other than for the information of the government, or by the nature of his position; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) "Enterprise" means any entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, industrial, eleemosynary, or social activity.

(3) "Business record" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

(4) Falsifying business records is a misdemeanor.

Sec. 873—Defrauding secured creditors.

(1) A person commits the offense of defrauding secured creditors if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

(2) Defrauding secured creditors is a misdemeanor.

Sec. 874—Misapplication of entrusted property.

(1) A person commits the offense of misapplication of entrusted property

if, with knowledge that he is misapplying property and that the misapplication involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, he misapplies or disposes of property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

(2) "Fiduciary" includes a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(3) To "misapply property" means to deal with the property contrary to law or governmental regulation relating to the custody or disposition of that property; "governmental regulation" includes administrative and judicial rules and orders as well as statutes and ordinances.

(4) Misapplication of property is a misdemeanor.

PART VIII. OFFENSES AFFECTING OCCUPATIONS

Sec. 880—Commercial bribery.

(1) A person commits the offense of commercial bribery if:

(a) he confers or offers or agrees to confer, direct or indirectly, any benefit upon:

(i) An agent with intent to influence the agent to act contrary to a duty to which, as an agent, he is subject; or

(ii) An appraiser with intent to influence the appraiser in his selection, appraisal, or criticism; or

(b) being an agent, an appraiser, or agent in charge of employment, he solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent:

(i) In the case of an agent, that he will thereby be influenced to act contrary to a duty to which, as an agent, he is subject; or

(ii) In the case of an appraiser, that he will thereby be influenced in his selection, appraisal, or criticism; or

(iii) In the case of an agent in charge of employment, that he will thereby be influenced in the exercise of his discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment.

(2) In this section:

(a) "Agent" means:

(i) An agent or employee of another;

(ii) A trustee, guardian, or other fiduciary;

(iii) A lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(iv) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

- (v) An arbitrator or other purportedly disinterested adjudicator or referee;
- (b) "Appraiser" means a person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services;
- (c) "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law.
- (3) Commercial bribery is a misdemeanor.

Sec. 881—Tampering with a publicity-exhibited contest.

- (1) A person commits the offense of tampering with a publicly-exhibited contest if:
 - (a) He confers, or offers or agrees to confer, directly or indirectly, any benefit upon:
 - (i) A contest participant with intent to influence him not to give his best efforts in a publicly-exhibited contest; or
 - (ii) A contest official with intent to influence him to perform improperly his duties in connection with a publicly-exhibited contest; or
 - (b) Being a contest participant or contest official, he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent that he will thereby be influenced:
 - (i) In the case of a contest participant, not to give his best efforts in a publicly-exhibited contest; or
 - (ii) In the case of a contest official, to perform improperly his duties in connection with a publicly-exhibited contest; or
 - (c) With intent to influence the outcome of a publicly-exhibited contest he:
 - (i) Tampers with any contest participant, contest official, animal, equipment, or other thing involved in the conduct or operation of the contest, in a manner contrary to the rules and usages purporting to govern the contest in question; or
 - (ii) Substitutes a contest participant, animal, equipment, or other thing involved in the conduct or operation of the contest, for the genuine person, animal, or thing.
- (2) In this section:
 - (a) "Publicly-exhibited contest" means any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, viewed by the public, but does not include an exhibition which does not purport to be and which is not represented as being such a sport, game, contest, or race;
 - (b) "Contest participant" means any person who participates or expects to participate in a publicly-exhibited contest as a player, contestant, or member of a team, or as a coach, manager, trainer, or other person directly associated with a player, contestant, or team;
 - (c) "Contest official" means any person who acts or expects to act in

a publicly-exhibited contest as an umpire, referee, or judge, or otherwise to officiate at a publicly-exhibited contest.

(3) Tampering with a publicly-exhibited contest is a misdemeanor.

CHAPTER 9

OFFENSES AGAINST THE FAMILY AND AGAINST INCOMPETENTS

Sec. 900—Illegally marrying.

(1) A person commits the offense of illegally marrying if he intentionally marries or purports to marry, knowing that he is legally ineligible to do so.

(2) Illegally marrying is a petty misdemeanor.

Sec. 901—Concealing the corpse of an infant.

(1) A person commits the offense of concealing the corpse of an infant if he conceals the corpse of a new-born child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the corpse of an infant is a misdemeanor.

Sec. 902—Abandonment of a child.

(1) A person commits the offense of abandonment of a child if, being a parent, guardian, or other person legally charged with the care or custody of a child less than 14 years old, he deserts the child in any place with intent to abandon it.

(2) Abandonment of a child is a misdemeanor.

Sec. 903—Persistent nonsupport.

(1) A person commits the offense of persistent nonsupport if he knowingly and persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) "Support" includes but is not limited to food, shelter, clothing, education, and other necessary care as determined by law.

(3) Persistent nonsupport is a misdemeanor.

Sec. 904—Endangering the welfare of a minor.

(1) A person commits the offense of endangering the welfare of a minor under 18 years of age if, being a parent, guardian, or other person charged with the care or custody of such a minor, he knowingly endangers the minor's physical or mental welfare by violating a legal duty of care or protection.

(2) Endangering the welfare of a minor is a misdemeanor.

Sec. 905—Endangering the welfare of an incompetent person.

(1) A person commits the offense of endangering the welfare of an incompetent person if he knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself because of physical or mental disease, disorder, or defect.

(2) Endangering the welfare of an incompetent person is a misdemeanor.

CHAPTER 10
OFFENSES AGAINST PUBLIC ADMINISTRATION
PART I. GENERAL PROVISIONS RELATING TO OFFENSES
AGAINST PUBLIC ADMINISTRATION

Sec. 1000—Definition of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

- (1) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;
- (2) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested;
- (3) "Custody" means restraint by a public servant pursuant to arrest, detention, or order of a court;
- (4) "Detention facility" means any place used for the confinement of a person:
 - (a) Arrested for, charged with, or convicted of a criminal offense; or
 - (b) Confined pursuant to chapter 571 of the Hawaii Revised Statutes; or
 - (c) Held for extradition; or
 - (d) Otherwise confined pursuant to an order of a court;
- (5) "Government" includes any branch, subdivision, or agency of the government of this State or any locality within it;
- (6) "Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of the government;
- (7) "Harm" means loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he is interested;
- (8) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this State or by any public servant authorized by law to impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror;
- (9) "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a falsification is material in a given factual situation is a question of law;
- (10) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated, and, for the purposes of this chapter, written statements shall be treated as if made under oath if:
 - (a) The statement was made on or pursuant to a form bearing

notice, authorized by law, to the effect that false statements made therein are punishable; or

- (b) The statement recites that it was made under oath or affirmation, the declarant was aware of such recitation at the time he made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto;
- (11) "Oath required or authorized by law" means an oath the use of which is specifically provided for by statute or appropriate regulatory provision;
- (12) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding;
- (13) "Peace officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to a specific class of offenses;
- (14) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;
- (15) "Public servant" means any officer or employee of any branch of government, whether elected, appointed, or otherwise employed, and any person participating as advisor, consultant, or otherwise, in performing a governmental function, but the term does not include jurors or witnesses;
- (16) "Statement" means any representation, but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation;
- (17) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

Sec. 1001—Forfeiture of property used as benefit or pecuniary benefit in the commission of an offense defined in this chapter.

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this chapter is forfeited, subject to the requirements of section 119, to the State.

PART II. OBSTRUCTION OF PUBLIC ADMINISTRATION

Sec. 1010—Obstructing government operations.

(1) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, he intentionally obstructs, impairs, or hinders:

- (a) The performance of a governmental function by a public servant acting under color of his official authority; or
 - (b) The enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his official authority.
- (2) This section does not apply to:
- (a) The obstruction, impairment, or hindrance of the making of an arrest; or
 - (b) The obstruction, impairment, or hindrance of any governmental function, as provided by law, in connection with a labor dispute with the government.
- (3) Obstruction of government operations is a misdemeanor.

Sec. 1011—Refusing to aid a peace officer.

(1) A person commits the offense of refusing to aid a peace officer when, upon a reasonable command by a person known to him to be a peace officer, he intentionally refuses or fails to aid such peace officer, in:

- (a) Effectuating or securing an arrest; or
 - (b) Preventing the commission by another of any offense.
- (2) Refusing to aid a peace officer is a petty misdemeanor.

(3) A person who complies with this section by aiding a peace officer shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

Sec. 1012—Refusing to assist in fire control.

(1) A person commits the offense of refusing to assist in fire control when:

- (a) Upon a reasonable command by a person known to him to be a fireman, he intentionally refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or
- (b) Upon command by a person known to him to be a fireman or peace officer, he intentionally disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

(2) "Fireman" means any officer of a fire department or any other person vested by law with the duty to extinguish fires.

(3) Refusing to assist in fire control is a petty misdemeanor.

(4) A person who complies with this section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

Sec. 1013—Compounding.

(1) A person commits the offense of compounding if he intentionally accepts or agrees to accept any pecuniary benefit as consideration for:

- (a) Refraining from seeking prosecution of an offense; or

(b) Refraining from reporting to law-enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

(2) It is an affirmative defense to a prosecution under subsection (1) that the pecuniary benefit did not exceed an amount which the defendant believed to be due as restitution or indemnification for harm caused by the offense.

(3) Compounding is a misdemeanor.

Sec. 1014—Rendering a false alarm.

(1) A person commits the offense of rendering a false alarm if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, any other government agency, or any public utility that deals with emergencies involving danger to life or property.

(2) Rendering a false alarm is a misdemeanor.

Sec. 1015—False reporting to law-enforcement authorities.

(1) A person commits the offense of false reporting to law-enforcement authorities if he intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when he knows that the information contained in the report is false.

(2) False reporting to law-enforcement authorities is a misdemeanor.

Sec. 1016—Impersonating a public servant.

(1) A person commits the offense of impersonating a public servant if he pretends to be a public servant and engages in any conduct in that capacity with intent to deceive anyone.

(2) It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.

(3) Impersonating a public servant is a misdemeanor.

Sec. 1017—Tampering with a public record.

(1) A person commits the offense of tampering with a public record if:

- (a) He knowingly and falsely makes, completes, or alters, or knowingly makes a false entry in, a written instrument which is or purports to be a public record or a true copy thereof; or
- (b) He knowingly presents or uses a written instrument which is or purports to be a public record or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine; or
- (c) He knowingly records, registers, or files, or offers for recordation, registration, or filing, in a governmental office or agency, a written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information; or

(d) Knowing he lacks the authority to do so:

- (i) He intentionally destroys, mutilates, conceals, removes, or otherwise impairs the availability of any public records; or

(ii) He refuses to deliver up a public record in his possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

(2) For the purpose of this section, "public record" includes all official books, papers, written instruments, or records created, issued, received, or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

(3) Tampering with public records is a misdemeanor.

Sec. 1018—Securing the proceeds of an offense.

(1) A person commits the offense of securing the proceeds of an offense if, with intent to assist another in profiting or benefiting from the commission of a crime, he aids the person in securing the proceeds of the crime.

(2) Securing the proceeds of an offense is a class C felony if the person assisted committed a class A or B felony; otherwise it is a misdemeanor.

PART III. ESCAPE AND OTHER OFFENSES RELATED TO CUSTODY

Sec. 1020—Escape in the first degree.

(1) A person commits the offense of escape in the first degree if he intentionally employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping from a correctional or detention facility or from custody.

(2) Escape in the first degree is a class B felony.

Sec. 1021—Escape in the second degree.

(1) A person commits the offense of escape in the second degree if he intentionally escapes from a correctional or detention facility or from custody.

(2) Escape in the second degree is a class C felony.

Sec. 1022—Promoting prison contraband in the first degree.

(1) A person commits the offense of promoting prison contraband in the first degree if:

(a) He intentionally conveys an unapproved dangerous instrument or unapproved drug to any person confined in a correctional or detention facility; or

(b) Being a person confined in a correctional or detention facility, he intentionally makes, obtains, or possesses an unapproved dangerous instrument or an unapproved drug.

(2) An "unapproved dangerous instrument" is any dangerous instrument which the supervisor of the correctional or detention facility has not approved for subsequent conveyance to or possession by the confined person. An "unapproved drug" is any quantity of any drug which the supervisor of the correctional or detention facility has not approved for subsequent conveyance to or possession by the confined person.

(3) Promoting prison contraband in the first degree is a class B felony.

Sec. 1023—Promoting prison contraband in the second degree.

(1) A person commits the offense of promoting prison contraband in the second degree if:

- (a) He intentionally conveys known contraband to any person confined in a correctional or detention facility; or
 - (b) Being a person confined in a correctional or detention facility, he intentionally makes, obtains, or possesses known contraband.
- (2) “Contraband” means any article or thing which a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order.
- (3) Promoting prison contraband in the second degree is a class C felony.

Sec. 1024—Bail jumping in the first degree.

(1) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that he will subsequently appear as ordered in connection with a charge of having committed a class A, B or C felony, he intentionally fails to appear as ordered.

(2) Bail jumping in the first degree is a class C felony.

Sec. 1025—Bail jumping in the second degree.

(1) A person commits the offense of bail jumping in the second degree if, having been released from custody by court order with or without bail, upon condition that he will subsequently appear as ordered in connection with a charge of having committed a misdemeanor or a petty misdemeanor, he intentionally fails to appear as ordered.

(2) Bail jumping in the second degree is a misdemeanor.

Sec. 1026—Resisting arrest.

(1) A person commits the offense of resisting arrest if he intentionally prevents a peace officer acting under color of his official authority from effecting an arrest by:

- (a) Using or threatening to use physical force against the peace officer or another; or
 - (b) Using any other means creating a substantial risk of causing bodily injury to the peace officer or another.
- (2) Resisting arrest is a misdemeanor.

Sec. 1027—Resisting an order to stop a motor vehicle.

(1) A person commits the offense of resisting an order to stop a motor vehicle if he intentionally fails to obey a direction of a peace officer, acting under color of his official authority, to stop his vehicle.

(2) Resisting an order to stop a motor vehicle is a misdemeanor.

Sec. 1028—Hindering prosecution; definition of rendering assistance.

For the purposes of sections 1029, 1030, and 1031, a person renders assistance to another if he:

- (1) Harbors or conceals such person;
- (2) Warns such person of impending discovery, apprehension, prosecution, or conviction, except this does not apply to a warning given in

connection with an effort to bring another into compliance with the law;

- (3) Provides such person with money, transportation, weapon, disguise, or other means of avoiding discovery, apprehension, prosecution, or conviction;
- (4) Prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of such person; or
- (5) Suppresses by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of such person.

Sec. 1029—Hindering prosecution in the first degree.

(1) A person commits the offense of hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a class A, B or C felony, he renders assistance to such person.

(2) Hindering prosecution in the first degree is a class C felony.

Sec. 1030—Hindering prosecution in the second degree.

(1) A person commits the offense of hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a crime, he renders assistance to such person.

(2) Hindering prosecution in the second degree is a misdemeanor.

PART IV. BRIBERY

Sec. 1040—Bribery

(1) A person commits the offense of bribery if:

- (a) He confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or
- (b) While a public servant, he solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced;

(2) It is a defense to a prosecution under subsection (1) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.

(3) For purposes of this section, "public servant" includes in addition to persons who occupy the position of public servant as defined in section 1000(15), persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.

(4) Bribery is a class C felony.

PART V. PERJURY AND RELATED OFFENSES

Sec. 1060—Perjury.

(1) A person commits the offense of perjury if in any official proceeding he makes, under an oath required or authorized by law, a false statement which he does not believe to be true.

(2) No person shall be convicted under this section unless the court rules that the false statement is a “materially false statement” as defined by section 1000(9). It is not a defense that the declarant mistakenly believed the false statement to be immaterial.

(3) Perjury is a class C felony.

Sec. 1061—False swearing in official matters.

(1) A person commits the offense of false swearing in official matters if he makes, under an oath required or authorized by law, a false statement which he does not believe to be true, and:

- (a) The statement is made in an official proceeding; or
 - (b) The statement is intended to mislead a public servant in the performance of his official duty.
- (2) False swearing in official matters is a misdemeanor.

Sec. 1062—False swearing.

(1) A person commits the offense of false swearing if he makes, under oath required or authorized by law, a false statement which he does not believe to be true.

(2) False swearing is a petty misdemeanor.

Sec. 1063—Unsworn falsification to authorities.

(1) A person commits the offense of unsworn falsification to authorities if, with an intent to mislead a public servant in the performance of his duty, he:

- (a) Makes any written statement, which he does not believe to be true, in an application for any pecuniary or other benefit or in a record or report required by law to be submitted to any governmental agency;
- (b) Submits or invites reliance on any writing which he knows to be falsely made, completed, or altered; or
- (c) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object he knows to be false.

(2) Unsworn falsification to authorities is a misdemeanor.

Sec. 1064—Retraction.

(1) It is a defense to a prosecution under this part that the defendant retracted his falsification:

- (a) If the falsification was made in an official proceeding, in the course of the same proceeding before discovery of the falsification became known to him; or
- (b) If the falsification was not made in an official proceeding, before reliance upon the falsification by the person or body for whom it was intended.

(2) “In the course of the same proceeding” includes separate hearings at

separate stages of the same official or administrative proceeding but does not include any stage of the proceeding after the close of the evidence.

Sec. 1065—Inconsistent statements.

(1) Where a person has made inconsistent statements, each of which if made with the requisite state of mind and under the requisite circumstances would constitute an offense specified in this part, and both statements have been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false; it shall only be necessary for the prosecution to prove:

- (a) That one or the other was false and not believed by the defendant to be true; and
- (b) The attendant circumstances and states of mind necessary to constitute each statement, if false, as an offense.

(2) The most serious offense of which a person may be convicted in such an instance shall be determined by hypothetically assuming each statement to be false. If offenses of different classes or grades would be established by the making of the two statements, the person may only be convicted of the lesser class or grade.

Sec. 1066—No prosecution based on previous denial of guilt.

No prosecution shall be brought:

(1) Under this part, if the substance of the defendant's false statement is his denial of guilt of an offense for which he has previously been put in jeopardy; or

(2) For a substantive offense, the denial of which was the basis of a former prosecution under this part.

Sec. 1067—Corroboration.

In any prosecution under this part, except a prosecution based upon inconsistent statements pursuant to section 1065, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

Sec. 1068—Irregularities no defense.

It is not a defense to a prosecution under this part:

- (1) That the defendant was not competent, for reasons other than lack of penal responsibility, to make the false statement alleged; or
- (2) That the statement was inadmissible under the law of evidence; or
- (3) That the oath was administered or taken in an irregular manner; or
- (4) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

PART VI. OFFENSES RELATED TO JUDICIAL AND OTHER PROCEEDINGS

Sec. 1070—Bribery of or by a witness.

(1) A person commits the offense of bribing a witness if he confers, or

offers or agrees to confer, directly or indirectly, any benefit upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to:

- (a) Influence the testimony of that person;
- (b) Induce that person to avoid legal process summoning him to testify; or
- (c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) A witness or a person believing he is about to be called as a witness in any official proceeding commits the offense of bribe receiving by a witness if he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration:

- (a) Which will influence his testimony;
 - (b) For avoiding or attempting to avoid legal process summoning him to testify; or
 - (c) For absenting or attempting to absent himself from an official proceeding, to which he has been legally summoned.
- (3) The offenses defined in this section are class C felonies.

Sec. 1071—Intimidating a witness.

(1) A person commits the offense of intimidating a witness if he uses force upon or a threat directed to a witness or a person he believes is about to be called as a witness in any official proceeding, with intent to:

- (a) Influence the testimony of that person;
- (b) Induce that person to avoid legal process summoning him to testify; or
- (c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) “Threat” as used in this section means any threat proscribed by section 724.

(3) Intimidating a witness is a class C felony.

Sec. 1072—Tampering with a witness.

(1) A person commits the offense of tampering with a witness if he intentionally engages in conduct to induce a witness or a person he believes is about to be called as a witness in any official proceeding to:

- (a) Testify falsely or withhold any testimony which he is not privileged to withhold; or
- (b) Absent himself from any official proceeding to which he has been legally summoned.

(2) Tampering with a witness is a misdemeanor.

Sec. 1073—Bribery of or by a juror.

(1) A person commits the offense of bribing a juror if he confers, or offers or agrees to confer, directly or indirectly, any benefit upon a juror with intent to influence the juror’s vote, opinion, decision, or other action as a juror.

(2) A person is guilty of the offense of bribe receiving by a juror if he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration which will influence his vote, opinion, decision, or other action as a juror.

(3) The offenses defined in this section are class C felonies.

Sec. 1074—Intimidating a juror.

(1) A person commits the offense of intimidating a juror if he uses force or a threat with intent to influence a juror's vote, opinion, decision, or other action as a juror.

(2) "Threat" as used in this section means any threat proscribed by section 724.

(3) Intimidating a juror is a class B felony.

Sec. 1075—Jury tampering.

(1) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a class C felony.

Sec. 1076—Tampering with physical evidence.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted, he:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity in the pending or prospective official proceeding;

(b) Makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) "Physical evidence," as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a misdemeanor.

Sec. 1077—Criminal contempt of court.

(1) A person commits the offense of criminal contempt of court if:

(a) He recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority; or

(b) He creates a breach of peace or a disturbance with intent to interrupt a court's proceedings; or

(c) As an attorney, clerk, or other officer of the court, he knowingly fails to perform or violates a duty of his office, or knowingly disobeys a lawful directive or order of a court; or

(d) He knowingly publishes a false report of a court's proceedings; or

(e) Knowing that he is not authorized to practice law, he represents himself to be an attorney and acts as such in a court proceeding; or

(f) He intentionally records or attempts to record the deliberation of a jury; or

(g) He intentionally disobeys or resists the process, injunction, or other mandate of a court; or

(h) He intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; or

(i) Being a juror, he intentionally, without permission of the court, fails

to attend a trial or official proceeding to which he has been summoned or at which he has been chosen to serve.

(2) Except as provided in subsection (3), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

(a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that he has been charged with or convicted of the contempt.

(5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A conviction under subsection (3) (a) shall not be subject to review by direct appeal.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, he may be imprisoned until he has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment.

CHAPTER 11

OFFENSES AGAINST PUBLIC ORDER

Sec. 1100—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

(1) "Public" means affecting or likely to affect a substantial number of persons;

(2) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and

hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(3) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;

(4) "Obstructs" means renders impassable without unreasonable inconvenience or hazard;

(5) "Animal" includes every living creature;

(6) "Cruelty", "torture" or "torment" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

Sec. 1101—Disorderly conduct.

(1) A person commits the offense of disorderly conduct if, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he:

(a) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(b) Makes unreasonable noise or offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;

(c) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

(2) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

Sec. 1102—Failure to disperse.

(1) When six or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a peace officer may order the participants and others in the immediate vicinity to disperse.

(2) A person commits the offense of failure to disperse if he knowingly fails to comply with an order made pursuant to subsection (1).

(3) Failure to disperse is a misdemeanor.

Sec. 1103—Riot.

(1) A person commits the offense of riot if he participates with five or more other persons in a course of disorderly conduct:

(a) With intent to commit or facilitate the commission of a felony; or

(b) When he or any other participant to his knowledge uses or intends to use a firearm or other dangerous instrument in the course of the disorderly conduct.

(2) Riot is a class C felony.

Sec. 1104—Unlawful assembly.

(1) A person commits the offense of unlawful assembly if:

(a) He assembles with five or more other persons with intent to engage in conduct constituting a riot; or

(b) Being present at an assembly that either has or develops a purpose

to engage in conduct constituting a riot, he remains there with intent to advance that purpose.

(2) Unlawful assembly is a misdemeanor.

Sec. 1105—Obstructing.

(1) A person commits the offense of obstructing if, having no legal privilege to do so, he knowingly or recklessly obstructs any highway or public passage, whether alone or with others.

(2) A person in a gathering commits the offense of obstructing if he refuses to obey a reasonable request or order by a peace officer to move:

- (a) To prevent obstruction of a highway or other public passage; or
- (b) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard.

(3) An order to move under subsection (2) (a), addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control.

(4) A person is not guilty of violating subsection (1) solely because persons gather to hear him speak or because he is a member of such a gathering.

(5) Obstructing is a petty misdemeanor if the person persists in the conduct specified in subsection (1) after a warning by a peace officer; otherwise it is a violation.

Sec. 1106—Harassment.

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, he:

- (a) Strikes, shoves, kicks, or otherwise touches a person in an offensive manner or subjects him to offensive physical contact; or
 - (b) Insults, taunts or challenges another person in a manner likely to provoke a violent or disorderly response; or
 - (c) Makes a telephone call without purpose of legitimate communication; or
 - (d) Makes repeated communications anonymously, or at extremely inconvenient hours, or in offensively coarse language; or
 - (e) Engages in any other course of harmful or seriously distressing conduct serving no legitimate purpose of the defendant.
- (2) Harassment is a petty misdemeanor.

Sec. 1107—Desecration.

(1) A person commits the offense of desecration if he intentionally desecrates:

- (a) Any public monument or structure; or
- (b) A place of worship or burial; or
- (c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) “Desecrate” means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover his action.

(3) Desecration is a misdemeanor.

Sec. 1108—Abuse of a corpse.

(1) A person commits the offense of abuse of a corpse if, except as authorized by law, he treats a human corpse in a way that he knows would outrage ordinary family sensibilities.

(2) Abuse of a corpse is a misdemeanor.

Sec. 1109—Cruelty to animals.

(1) A person commits the offense of cruelty to animals if he knowingly or recklessly:

(a) Overdrives, overloads, tortures, torments, deprives of necessary sustenance, or cruelly beats or needlessly mutilates or kills, or causes or procures to be overdriven, overloaded, tortured, tormented or deprived of necessary sustenance, or to be cruelly beaten, or needlessly mutilated or killed, any living creature;

(b) Keeps or uses; or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock or other creature, and every person who encourages, aids or assists therein, or who permits or suffers any place to be so kept or used;

(c) Carries or causes to be carried, in or upon any vehicle or other conveyance, any creature, in a cruel or inhumane manner;

(d) Sets on foot, or instigates in or does any act towards the furtherance of any act of cruelty to animals.

(2) Subsections (1) (a), (c), (d) and the following subsection (3) are not applicable to accepted veterinary practices and to activities carried on for scientific research governed by standards of accepted educational or medical practices.

(3) Whenever any domestic animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed.

(4) Cruelty to animals is a misdemeanor.

Sec. 1110—Relating to agent of society.

The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district judge thereof offenders found violating the provisions of section 1109 to be dealt with according to law.

Sec. 1111—Violation of privacy.

(1) A person commits the offense of violation of privacy if, except in the execution of a public duty or as authorized by law, he intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or

(b) Installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in that place, or uses any such unauthorized installation; or

- (c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or
- (d) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately; but this subsection does not apply to:
 - (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
 - (ii) Interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or
- (e) Divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.
- (2) Violation of privacy is a misdemeanor.

CHAPTER 12

OFFENSES AGAINST PUBLIC HEALTH AND MORALS

PART I. PROSTITUTION AND PROMOTING PROSTITUTION

Sec. 1200—Prostitution.

- (1) A person commits the offense of prostitution if he engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee.
- (2) As used in subsection (1), “sexual conduct” means “sexual intercourse,” “deviate sexual intercourse,” or “sexual contact,” as those terms are defined in section 700.
- (3) Prostitution is a petty misdemeanor.

Sec. 1201—Promoting prostitution; definition of terms.

In sections 1202, 1203 and 1204:

- (1) A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.
- (2) A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally-rendered prostitution

services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

Sec. 1202—Promoting prostitution in the first degree.

(1) A person commits the offense of promoting prostitution in the first degree if he knowingly:

- (a) Advances prostitution by compelling a person by criminal coercion to engage in prostitution, or profits from such coercive conduct by another; or
 - (b) Advances or profits from prostitution of a person less than 14 years old.
- (2) Promoting prostitution in the first degree is a class B felony.

Sec. 1203—Promoting prostitution in the second degree.

(1) A person commits the offense of promoting prostitution in the second degree if he knowingly:

- (a) Advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or
 - (b) Advances or profits from prostitution of a person less than 18 years old.
- (2) Promoting prostitution in the second degree is a class C felony.

Sec. 1204—Promoting prostitution in the third degree.

(1) A person commits the offense of promoting prostitution in the third degree if he knowingly advances or profits from prostitution.

- (2) Promoting prostitution in the third degree is a misdemeanor.

Sec. 1205—Promoting prostitution; corroboration.

A person shall not be convicted of promoting prostitution, in any degree, or of attempt to commit any such offense, solely upon the uncorroborated testimony of a person whose prostitution activity he is alleged to have advanced or attempted to advance, or from whose prostitution activity he is alleged to have profited or attempted to profit.

PART II. OFFENSES RELATED TO OBSCENITY

Sec. 1210—Definitions of terms in this part.

In this part, unless a different meaning is required:

- (1) “Disseminate” means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same.
- (2) “Material” means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, sculptures, and tape or wire recordings.
- (3) “Minor” means any person less than 16 years old.

- (4) "Performance" means any play, motion picture film, dance, or other exhibition performed before an audience.
- (5) "Pornographic." Any material or performance is "pornographic" if all of the following coalesce:
 - (a) Considered as a whole, its predominant appeal is to prurient interest in sexual matters. In determining predominant appeal, the material or performance shall be judged with reference to ordinary adults, unless it appears from the character of the material or performance and the circumstances of its dissemination that it is designed for a particular, clearly defined audience. In that case, it shall be judged with reference to the specific audience for which it was designed.
 - (b) It goes substantially beyond customary limits of candor in describing or representing sexual matters. In determining whether material or a performance goes substantially beyond the customary limits of candor in describing or representing sexual matters, it shall be judged with reference to the contemporary standards of candor of ordinary adults relating to the description or representation of such matters.
 - (c) It is utterly without redeeming social value.
- (6) "Pornographic for minors." Any material or performance is "pornographic for minors" if:
 - (a) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:
 - (i) It is presented in such a manner as to predominantly appeal to a minor's prurient interest; and
 - (ii) It is utterly without redeeming social value for minors; or
 - (b) It contains any photograph, drawing, or similar visual representation of any such person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:
 - (i) It is presented in such a manner as to predominantly appeal to a minor's prurient interest; and
 - (ii) It is utterly without redeeming social value for minors.
- (7) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.
- (8) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
- (9) "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

Sec. 1211—Displaying indecent matter.

(1) A person commits the offense of displaying indecent matter if he knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

- (a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse; and
 - (b) Which is presented in such a manner as to exploit lust; and
 - (c) Which is utterly without redeeming social value.
- (2) Displaying indecent material is a petty misdemeanor.

Sec. 1212—Displaying indecent words.

(1) A person commits the offense of displaying indecent words if he knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk a word connoting sexual excitement, an act of sexual conduct, defecation, or the genital or pubic area of the male or female anatomy.

(2) Displaying indecent words is a petty misdemeanor.

Sec. 1213—Displaying indecent material or words: prima facie evidence.

The fact that a person engaged in the conduct specified by sections 1211 or 1212 is prima facie evidence that he engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material or word which is displayed.

Sec. 1214—Promoting pornography.

(1) A person commits the offense of promoting pornography if, knowing its content and character, he:

- (a) Disseminates for monetary consideration any pornographic material; or
 - (b) Produces, presents, or directs pornographic performances for monetary consideration; or
 - (c) Participates for monetary consideration in that portion of a performance which makes it pornographic.
- (2) Promoting pornography is a misdemeanor.

Sec. 1215—Promoting pornography for minors.

(1) A person commits the offense of promoting pornography for minors if:

- (a) Knowing its character and content, he disseminates to a minor material which is pornographic for minors; or
- (b) Knowing the character and content of a motion picture film or other performance which, in whole or in part, is pornographic for minors, he:

- (i) Exhibits such motion picture film or other performance to a minor; or
- (ii) Sells to a minor an admission ticket or pass to premises

where there is exhibited or to be exhibited such motion picture film or other performance; or

- (iii) Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.

(2) Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor, or to a sibling of the minor.

(3) Promoting pornography for minors is a misdemeanor.

Sec. 1216—Promoting pornography: prima facie evidence.

(1) The fact that a person engaged in the conduct specified by sections 1214 or 1215 is prima facie evidence that he engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(2) In a prosecution under section 1215, the fact that the person:

- (a) To whom material pornographic for minors was disseminated, or
- (b) To whom a performance pornographic for minors was exhibited, or
- (c) To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance, or
- (d) Who was admitted to premises where there was or was to have been such performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

Sec. 1217—Open lewdness.

(1) A person commits the offense of open lewdness if in a public place he does any lewd act which is likely to be observed by others who would be affronted or alarmed.

(2) Open lewdness is a petty misdemeanor.

PART III. GAMBLING OFFENSES

Sec. 1220—Definitions of terms in this part.

In this part unless a different meaning plainly is required, the following definitions apply.

(1) “Advance gambling activity.” A person “advances gambling activity” if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits

that activity to occur or continue or makes no effort to prevent its occurrence or continuation.

(2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

(5) "Gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

(6) "Lottery" means an unlawful gambling scheme in which:

- (a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and
- (b) The winning chances are to be determined by a drawing or by some other method based on an element of chance; and
- (c) The holders of the winning chances are to receive something of value.

(7) "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(8) "Player" means a person over the age of majority who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. "Social gambling" is gambling, or a contest of chance, in which the only participants are players and from which no person, corporation, or other business entity receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any

source, fee, remuneration connected with said gambling, or such activity as arrangement or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service, or entertainment to participants, players, or spectators. A person who engages in "book-making" as defined in paragraph (2) is not a "player."

(9) "Profit from gambling activity." A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(10) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Sec. 1221—Promoting gambling in the first degree.

(1) A person commits the offense of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling activity by:

- (a) Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than \$500; or
- (b) Receiving in connection with a lottery, or mutuel scheme or enterprise money or written records from a person other than a player whose chances or plays are represented by such money or records; or
- (c) Receiving in connection with a lottery, mutuel, or other gambling scheme or enterprise more than \$500 in any one day of money played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a class C felony.

Sec. 1222—Promoting gambling in the second degree.

(1) A person commits the offense of promoting gambling in the second degree if he knowingly advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a misdemeanor.

Sec. 1223—Possession of gambling records in the first degree.

(1) A person commits the offense of possession of gambling records in the first degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article, which constitutes, reflects, or represents more than five bets totaling more than \$500, and which is:

- (a) Of a kind commonly used in the operation or promotion of a book-making scheme or enterprise; or
- (b) Of a kind commonly used in the operation, promotion, or playing of a lottery, or mutuel scheme or enterprise.

(2) Possession of gambling records in the first degree is a class C felony.

Sec. 1224—Possession of gambling records in the second degree.

(1) A person commits the offense of possession of gambling records in the second degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article, which is:

- (a) Of a kind commonly used in the operation or promotion of a book-making scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the second degree is a misdemeanor.

Sec. 1225—Possession of a gambling device.

(1) A person commits the offense of possession of a gambling device if he manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of unlawful gambling activity.

(2) Possession of a gambling device is a misdemeanor.

Sec. 1226—Possession of gambling records; defense.

In any prosecution under sections 1223 or 1224, it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of unlawful gambling activity.

Sec. 1227—Gambling offenses; prima facie evidence.

(1) Proof of possession of any gambling record specified in sections 1223 and 1224 or of any gambling device is prima facie evidence of possession thereof with knowledge of its contents and character.

(2) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

Sec. 1228—Lottery offenses; no defense.

It is no defense to a prosecution under any section of this part relating to a lottery that the lottery itself is drawn or conducted outside this State and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

Sec. 1229—Forfeiture of gambling devices, records, and proceeds.

Any gambling device or gambling record possessed in violation of a section in this part, or any money used as a bet or stake in gambling activity in violation of a section in this part, is forfeited, subject to the requirements of section 119, to the State.

Sec. 1230—Status as player; affirmative defense.

In any prosecution for an offense defined in this part, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.

PART IV. OFFENSES RELATED TO DRUGS AND INTOXICATING COMPOUNDS

Sec. 1240—Definitions of terms in this part.

In this part, unless a different meaning plainly is required:

(1) "Dangerous drugs" means any substance or immediate precursor

defined or specified as a "Schedule I substance" or a "Schedule II substance" by Chapter 329 of the Hawaii Revised Statutes, except marijuana or marijuana concentrate;

- (2) "Harmful drug" means any substance or immediate precursor defined or specified as a "Schedule III substance" or a "Schedule IV substance" by Chapter 329 of the Hawaii Revised Statutes, or any marijuana concentrate except marijuana;
- (3) "Detrimental drug" means any substance or immediate precursor defined or specified as a "Schedule V substance" by Chapter 329 of the Hawaii Revised Statutes, or any marijuana;
- (4) "Immediate precursor" means a substance which the Department of Health, State of Hawaii, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;
- (5) "Intoxicating compounds" means any compound, liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. For the purposes of this section, any such condition so induced shall be deemed to be an intoxicated condition;
- (6) "Marijuana" means any part of the plant *cannabis sativa*, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, "marijuana" does not include hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;
- (7) "Marijuana concentrate" means hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;
- (8) "Minor" means a person who has not reached the age of majority;
- (9) "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids;
- (10) "Practitioner" means
 - (a) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.
 - (b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct

research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

- (11) "To distribute" means to sell, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same;
- (12) "To sell" means to transfer to another for consideration; and
- (13) "Unlawfully" means:
 - (a) To possess or distribute a Schedule I, II, III, IV or V substance, a marijuana concentrate, marijuana, or intoxicating compound, when not authorized by law to do so by an apothecary, physician, dentist, podiatrist, practitioner, or veterinarian; or
 - (b) To receive and possess a Schedule I, II, III, IV or V substance, a marijuana concentrate, marijuana, or intoxicating compound, from sources unauthorized by the law to distribute such substances.

Sec. 1241—Promoting a dangerous drug in the first degree.

- (1) A person commits the offense of promoting a dangerous drug in the first degree if he knowingly and unlawfully:
 - (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or
 - (ii) Two ounces or more, containing one or more of any of the other dangerous drugs; or
 - (b) Distributes:
 - (i) 50 or more capsules, tablets, ampules, or syrettes containing one or more dangerous drugs; or
 - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of
 - (A) $\frac{1}{8}$ ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or
 - (B) $\frac{1}{2}$ ounce or more, containing any other dangerous drug; or
 - (c) Distributes any dangerous drug in any amount to a minor who is at least three years his junior.
- (2) Promoting a dangerous drug in the first degree is a class A felony.

Sec. 1242—Promoting a dangerous drug in the second degree.

- (1) A person commits the offense of promoting a dangerous drug in the second degree if he knowingly and unlawfully:
 - (a) Possesses 50 or more capsules, tablets, ampules, or syrettes, containing one or more dangerous drugs; or
 - (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) $\frac{1}{8}$ ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

- (ii) ½ ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount.
- (2) Promoting a dangerous drug in the second degree is a class B felony.

Sec. 1243—Promoting a dangerous drug in the third degree.

- (1) A person commits the offense of promoting a dangerous drug in the third degree if he knowingly and unlawfully possesses any dangerous drug in any amount.
- (2) Promoting a dangerous drug in the third degree is a class C felony.

Sec. 1244—Promoting a harmful drug in the first degree.

- (1) A person commits the offense of promoting a harmful drug in the first degree if he knowingly and unlawfully:
 - (a) Possesses 400 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
 - (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combinations thereof; or
 - (c) Distributes 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
 - (d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
 - (e) Distributes any harmful drug or any marijuana concentrate in any amount to a minor who is at least three years his junior.
- (2) Promoting a harmful drug in the first degree is a class B felony.

Sec. 1245—Promoting a harmful drug in the second degree.

- (1) A person commits the offense of promoting a harmful drug in the second degree if he knowingly and unlawfully:
 - (a) Possesses 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
 - (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
 - (c) Distributes any harmful drug or any marijuana concentrate in any amount.
- (2) Promoting a harmful drug in the second degree is a class C felony.

Sec. 1246—Promoting a harmful drug in the third degree.

- (1) A person commits the offense of promoting a harmful drug in the third degree if he knowingly and unlawfully possesses any harmful drug in any amount.
- (2) Promoting a harmful drug in the third degree is a misdemeanor.

Sec. 1247—Promoting a detrimental drug in the first degree.

(1) A person commits the offense of promoting a detrimental drug in the first degree if he knowingly and unlawfully:

- (a) Possesses 400 or more capsules or tablets containing one or more of the Schedule V substances; or
 - (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the Schedule V substances; or
 - (c) Distributes 50 or more capsules or tablets containing one or more of the Schedule V substances; or
 - (d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of $\frac{1}{8}$ ounce or more, containing one or more of the Schedule V substances; or
 - (e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.2 pounds or more, containing any marijuana; or
 - (f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2 ounces or more, containing any marijuana; or
 - (g) Distributes any marijuana or any Schedule V substance in any amount to a minor who is at least three years his junior.
- (2) Promoting a detrimental drug in the first degree is a class C felony.

Sec. 1248—Promoting a detrimental drug in the second degree.

(1) A person commits the offense of promoting a detrimental drug in the second degree if he knowingly and unlawfully:

- (a) Possesses 50 or more capsules or tablets containing one or more of the Schedule V substances; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of $\frac{1}{8}$ ounce or more, containing one or more of the Schedule V substances; or
- (c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1 ounce or more, containing any marijuana; or
- (d) Sells any marijuana or distributes any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor.

Sec. 1249—Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if he knowingly and unlawfully possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

Sec. 1250—Promoting intoxicating compounds.

(1) A person commits the offense of promoting intoxicating compounds if he knowingly and unlawfully:

- (a) Breathes, inhales, or drinks any compound, liquid, or chemical

containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes.

- (b) Sells or offers for sale, delivers or gives to any person under 18 years of age, unless upon written order of such person's parent or guardian, any compound liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror or deliveror knows or has reason to know that such compound is intended for use to induce such condition.
- (2) Promoting intoxicating compounds is a misdemeanor.
- (3) This section shall not apply to any person who commits any act described herein pursuant to the direction or prescription of a practitioner, as defined in the "Hawaii Food, Drug and Cosmetic Act" (HRS, section 328-16).

Sec. 1251—Possession in a motor vehicle; prima facie evidence.

(1) Except as provided in subsection (2), the presence of a dangerous drug, harmful drug, or detrimental drug in a motor vehicle, other than a public omnibus, is prima facie evidence of knowing possession thereof by each and every person in the vehicle at the time the drug was found.

(2) Subsection (1) does not apply to:

- (a) Other occupants of the motor vehicle if the substance is found upon the person of one of the occupants therein; or
- (b) All occupants, except the driver or owner of the motor vehicle, if the substance is found in some portion of the vehicle normally accessible only to the driver or owner; or
- (c) The driver of a motor vehicle who is at the time operating it for hire in the pursuit of his trade, if the substance is found in a part of the vehicle used or occupied by passengers.

Sec. 1252—Knowledge of character, nature, or quantity of substance, or age of transferee; prima facie evidence.

(1) The fact that a person engaged in the conduct specified by any section in this part is prima facie evidence that he engaged in that conduct with knowledge of the character, nature, and quantity of the dangerous drug, harmful drug, detrimental drug, or intoxicating compounds possessed, distributed, or sold.

(2) The fact that the defendant distributed or sold a dangerous drug, harmful drug, detrimental drug, or intoxicating compound, to a minor is prima facie evidence that the defendant knew the transferee to be a minor.

Sec. 1253—Penalties under other laws.

Any penalty imposed for violation of this Part or HRS, Chapter 329 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

Sec. 1254—Bar to prosecution.

If a violation of this Part or HRS Chapter 329 is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State.

Sec. 1255—Conditional discharge.

(1) Whenever any person who has not previously been convicted of any offense under this Part or HRS Chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under sections 1243, 1245, 1246, 1248, 1249, or 1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this Part or Chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted.

Sec. 1256—Expunging of court records.

(1) Upon the dismissal of such person and discharge of the proceeding against him under section 1255 of this chapter, this person, if he was not over 20 years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 20 years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose.

CHAPTER 13

REPEAL AND RECODIFICATION PROVISIONS

Sec. 1300—Repeal and recodification.

(1) As of its effective date, the Hawaii Penal Code shall be codified as Title 37 of Hawaii Revised Statutes.

(2) Title 37 of the Hawaii Revised Statutes, as it shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and is hereby, as of the effective date, repealed or recodified as follows:

(a) The following chapters and sections shall be, and are hereby, repealed as of the effective date:

- (i) chapter 701 (sections 701 through 701-7);
- (ii) chapter 702 (sections 702-1 through 702-14);
- (iii) chapter 703 (sections 703-1 through 703-5);
- (iv) chapter 704 (sections 704-1 through 704-5);
- (v) sections 705-1 through 705-3, and 705-5.5;
- (vi) chapter 706 (sections 706-1 through 706-5);
- (vii) chapter 707 (sections 707-1 and 707-2);
- (viii) sections 710-12 through 710-14;
- (ix) sections 711-65, 711-66, 711-71 through 711-73, 711-76, 711-77, 711-80 through 711-83, 711-85, 711-91 through 711-94; and

(x) chapter 712 (sections 712-1 through 712-11).

(b) The following chapters and sections shall be assigned appropriate chapter and section numbers and shall be recodified, as of the effective date, by the revisor of statutes as Title 38 of the Hawaii Revised Statutes:

- (i) sections 705-4, 705-5, and 705-6 through 705-8, chapter 705C (sections 705C-1 through 705C-12);
- (ii) chapter 708 (sections 708-1 through 708-38);
- (iii) sections 709-1 through 709-19, 709-31 through 709-41, and 709-51;
- (iv) sections 710-1 through 710-11, and 710-15;
- (v) sections 711-1 through 711-64, 711-67, 711-68, 711-78, 711-79, 711-84, and 711-96;
- (vi) chapter 713 (sections 713-1 through 713-27), chapter 713C (sections 713C-1 through 713C-6);

- (vii) chapter 714 (sections 714-1 through 714-6);
- (viii) chapter 715 (sections 715-1 through 715-19);
- (ix) chapter 716 (sections 716-1 through 716-7);
- (x) chapter 718 (sections 718-1 through 718-8); and
- (xi) chapter 719 (sections 719-1 through 719-6).

(3) Title 38 of the Hawaii Revised Statutes, as it shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and is hereby, as of the effective date, repealed or recodified as follows:

- (a) The following chapters and sections shall be, and are hereby, repealed as of the effective date:
 - (i) chapter 721 (sections 721-1 through 721-5);
 - (ii) chapter 722 (sections 722-1 through 722-12);
 - (iii) chapter 723 (sections 723-1 through 723-11);
 - (iv) chapter 724 (sections 724-1 through 724-9);
 - (v) chapter 725 (sections 725-1 through 725-11);
 - (vi) chapter 726 (sections 726-1 through 726-4);
 - (vii) sections 727-1 through 727-24;
 - (viii) sections 728-1 through 728-7, 728-9 and 728-10;
 - (ix) chapter 729 (sections 729-1 through 729-5);
 - (x) chapter 731 (section 731-1);
 - (xi) chapter 733 (sections 733-1 through 733-8);
 - (xii) section 734-3;
 - (xiii) chapter 735 (sections 735-1 through 735-4);
 - (xiv) chapter 736 (section 736-1);
 - (xv) chapter 737 (section 737-1);
 - (xvi) chapter 738 (sections 738-1 through 738-4);
 - (xvii) chapter 739 (sections 739-1 through 739-7);
 - (xviii) chapter 740 (sections 740-1 through 740-12);
 - (xix) chapter 741 (sections 741-1 through 741-8);
 - (xx) chapter 742 (sections 742-1 through 742-7);
 - (xxi) chapter 743 (sections 743-1 through 743-21);
 - (xxii) chapter 744 (sections 744-1 through 744-4);
 - (xxiii) chapter 745 (sections 745-1 through 745-7);
 - (xxiv) chapter 746 (sections 746-1 through 746-19);
 - (xxv) sections 747-1 through 747-16, 747-18 through 747-25;
 - (xxvi) chapter 748 (sections 748-1 through 748-12);
 - (xxvii) chapter 749 (sections 749-1 through 749-6);
 - (xxviii) chapter 750 (sections 750-1 through 750-22);
 - (xxix) chapter 751 (sections 751-1 through 751-14);
 - (xxx) chapter 752 (sections 752-1);
 - (xxxi) chapter 753 (sections 753-1 through 753-17);
 - (xxxii) chapter 755 (section 755-1);
 - (xxxiii) chapter 756 (sections 756-1 through 756-5);
 - (xxxiv) chapter 758 (section 758-1);
 - (xxxv) chapter 759 (sections 759-1 and 759-2);
 - (xxxvi) chapter 761 (sections 761-1 through 761-10);
 - (xxxvii) chapter 762 (section 762-1);

- (xxxviii) chapter 763 (sections 763-1 and 763-2);
 - (xxxix) chapter 764 (sections 764-1 through 764-3);
 - (xl) chapter 765 (sections 765-1 through 765-11);
 - (xli) chapter 766 (section 766-1);
 - (xlii) chapter 767 (sections 767-1 through 767-12);
 - (xliii) chapter 768 (sections 768-1 through 768-77);
 - (xliv) chapter 770 (section 770-1);
 - (xlv) chapter 771 (sections 771-1 and 771-2); and
 - (xlvi) chapter 772 (sections 772-1 through 772-7).
- (b) The following chapters and sections shall be assigned appropriate chapter and section numbers and shall be recodified, as of the effective date, by the revisor of statutes as hereafter provided:
- (i) section 727-25 shall be recodified as part of chapter 134, which shall be retitled "Firearms, Ammunition, and Dangerous Weapons";
 - (ii) section 728-8 shall be recodified as part of Title 38;
 - (iii) chapter 730 (sections 730-1 through 730-12) shall be recodified as part of Title 38;
 - (iv) chapter 732-1 (section 732-1) shall be recodified as part of Title 12;
 - (v) sections 734-1 and 734-2 shall be recodified as part of Title 19;
 - (vi) section 747-17 shall be recodified as part of Title 34 and the revisor of statutes shall change the references in the section so that the same shall refer to section 871 of the Hawaii Penal Code;
 - (vii) chapter 754 (sections 754-1 and 754-2) shall be recodified as part of Title 38;
 - (viii) chapter 757 (sections 757-1 and 757-2) shall be recodified as part of Title 21;
 - (ix) chapter 760 (sections 760-1 through 760-3) shall be recodified as part of Title 19;
 - (x) chapter 769 (section 769-1) shall be recodified as part of chapter 134, which shall be retitled "Firearms, Ammunition, and Dangerous Weapons";
 - (xi) chapter 773 (sections 773-1 through 773-3) shall be recodified as part of Title 19; and
 - (xii) chapter 774 (section 774-1) shall be recodified as part of Title 26.

(4) The following sections of the Hawaii Revised Statutes, as they shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and are hereby, as of the effective date, repealed or amended as hereafter provided:

- (a) section 65-50 is repealed;
- (b) section 66-48 is repealed;
- (c) section 185-8 is repealed;
- (d) sections 275-1 through 275-5, and section 275-8 are repealed;

(e) section 353-49 is repealed;

(f) section 328-84 is amended as follows:

(i) paragraph (a) of said section is amended to read:

“(a) Any person violating any provision of this chapter, unless some other grade of offense or penalty is provided for such conduct by this chapter or by chapter 6 and part IV of chapter 12 of the Hawaii Penal Code, is guilty of a class C felony”;

(ii) paragraph (b) is repealed;

(iii) paragraph (c) is renumbered as paragraph (b);

(g) section 329-3 is amended by deleting therefrom the second and third paragraphs thereof;

(h) sections 329-4 and 329-5 are repealed;

(i) section 329-29 is amended to read as follows:

“Any person violating any section of this chapter, unless some other grade of offense or penalty is provided for such conduct by this chapter or by chapter 6 and part IV of chapter 12 of the Hawaii Penal Code, is guilty of a misdemeanor”;

(j) section 329-31 is repealed;

(k) section 575-1 is repealed; and

(l) sections 577-8 and 577-12 are repealed.”

Section 2. Severability. If any provision of the Code adopted by this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of the Code are severable.

Section 3. This Act shall take effect on January 1, 1973.

(Approved April 7, 1972.)

ACT 10

S. B. NO. 310

A Bill for an Act Relating to the Adoption of the Uniform Controlled Substances Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Except as otherwise specified in this Act, the present Chapter 329, Hawaii Revised Statutes, entitled “Narcotics” is repealed and the following substituted therefor as Chapter 329:

**“CHAPTER
UNIFORM CONTROLLED SUBSTANCES ACT
PART I. GENERAL PROVISIONS**

Sec. -1 Definitions. As used in this chapter:

‘Abuse’ means the misuse of a substance or the use of a substance to an extent deemed deleterious or detrimental to the user, to others, or to society.

'Administer' means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) a practitioner (or, in his presence, by his authorized agent), or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

'Agent' means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

'Bureau' means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

'Controlled substance' means a drug, substance, or immediate precursor in Schedules I through V of Part II.

'Counterfeit substance' means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, or a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

'Deliver' or 'delivery' means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

'Department' means the department of health, State of Hawaii.

'Dispense' means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

'Dispenser' means a practitioner who dispenses.

'Distribute' means to deliver other than by administering or dispensing a controlled substance.

'Distributor' means a person who distributes.

'Drug' means:

- (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;
- (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and
- (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

'Immediate precursor' means a substance which the department has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled

substance, the control of which is necessary to prevent, curtail, or limit manufacture.

'Manufacture' means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- (1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
- (2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

'Marijuana' means all parts of the plant *Cannabis sativa*, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

'Narcotic drug' means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section -5 of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

'Opium poppy' means the plant of the species *Papaver somniferum*, except its seeds.

'Person' means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

'Poppy straw' means all parts, except the seeds, of the opium poppy, after mowing.

'Practitioner' means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.
- (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.
- (3) Prescribe means: to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.
- (4) Prescriber means: one who is authorized to issue a prescription.
- (5) Prescription means: an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, for the compounding or dispensing of drugs.

'Production' includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

'State', when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

'Ultimate user' means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

"§ -2 Hawaii advisory commission on controlled substances; number; appointment. There shall be established a state advisory commission on controlled substances hereinafter called the commission, consisting of fifteen members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. The commission shall elect its chairman. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission.

The commission shall be a part of the department of health for administrative purposes, as provided for in section 26-35.

"§ -3 Annual report. The commission shall prepare and present to the governor in the month of January in each year a report respecting its actions during the preceding fiscal year, together with its recommendations respecting

legislation, copies of which reports shall be furnished by the governor to the legislature.

"§ -4 Duties of the commission. The commission shall:

- (1) Act in an advisory capacity to the department relating to the scheduling of substances provided in part II of this chapter, by recommending the addition, deletion, or rescheduling of all substances enumerated in part II of this chapter.
- (2) Act in an advisory capacity to the department relating to establishment and maintenance of the classes of controlled substances, as provided in part II of this chapter.
- (3) Assist the department in coordinating all action programs of community agencies (State, county, military, or private) specifically focused on the problem of drug abuse.
- (4) Assist the department in carrying out educational programs designed to prevent and deter abuse of controlled substances.
- (5) Encourage research on abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, it may, with the approval of the director of health: (A) establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse; (B) make studies and undertake programs of research to:
 - (i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter.
 - (ii) determine patterns of abuse of controlled substances and the social effects thereof; and
 - (iii) improve methods for preventing, predicting, understanding, and dealing with the abuse of controlled substances.
- (6) Create public awareness and understanding of the problems of drug abuse; and
- (7) Sit in an advisory capacity to the governor, director of health, director of social services and housing on matters relating to the commission's work.

"PART II. STANDARDS AND SCHEDULES

Section -5. Authority to Schedule Controlled Substances.

(a) Annually, upon the convening of each annual session of the State Legislature, the department shall report to the Legislature the effects of the implementation of this chapter in relation to the problems of drug abuse in Hawaii and shall recommend to the Legislature any additions, deletions or revisions in the schedules of substances, enumerated in Sections 8, 10, 12, 14 and 16 of this chapter, and any other recommendations which it deems necessary. The department shall not recommend any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing

is afforded all interested parties, except such hearing shall not be required if official notice has been received that the substance has been added, deleted or rescheduled as a controlled substance under federal law. In making a determination regarding a substance, the department shall assess the degree of danger or probable danger of the substance by considering the following:

- (1) the actual or probable abuse of the substance including:
 - (a) its history and current pattern of abuse;
 - (b) the scope, duration and significance of abuse; and
 - (c) a judgment of the degree of actual or probable detriment which may result from the abuse of the substance.
- (2) the biomedical hazard of the substance including:
 - (a) its pharmacology: the effects and modifiers of effects of the substance;
 - (b) its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not and liability to psychic or physiological dependence;
 - (c) risk to public health and particular susceptibility of segments of the population; and
 - (d) existence of therapeutic alternatives for substances which are or may be used for medical purposes.
- (3) a judgment of the probable physical and social impact of widespread abuse of the substance.
- (4) whether the substance is an immediate precursor of a substance already controlled under this part.
- (5) the current state of scientific knowledge regarding the substance.

(b) After considering the factors enumerated above, the department shall make a recommendation to the Legislature, specifying to what schedule the substance should be added, deleted or rescheduled if it finds that the substance has a degree of danger or probable danger. The department may make such recommendation to the legislature prior to the submission of its annual report in which case the department shall publish and give notice to the public of such recommendation.

(c) The State Legislature has the sole authority to add, delete, or reschedule all substances enumerated in the schedules in Sections -8, -10, -12, -14, and -16.

(d) If the legislature designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(e) If a substance is added, deleted or rescheduled as a controlled substance under federal law and notice of the designation is given to the department, the department shall recommend that a corresponding change in Hawaii law be made by the state legislature, unless the department objects to the change. In that case, the department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. Following the hearing, the department shall announce its decision and shall notify the legislature in writing of the change in federal law or regulations and of the department's recommendation.

“§ -6 **Nomenclature.** The controlled substances listed or to be listed in the schedules in Sections -8, -10, -12, -14, and -16 are included by whatever official, common, usual, chemical, or trade name designated.

“§ -7 **Schedule I Tests.** A substance shall be placed in Schedule I if it has the highest degree of danger or probable danger according to the determination made pursuant to Section -5.

“§ -8 **Schedule I.** (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etomeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacetylmorphan
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;

- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Racemoramide;
- (42) Trimerperidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myorphine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Phoclodine;
- (22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2, 5-dimethoxylamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marijuana;

- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols.

Section -9. Schedule II Tests. A substance shall be placed in Schedule II if it has a high degree of danger or probable danger according to the determination made pursuant to Section 5.

“§ -10 Schedule II. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane;
- (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (14) Pethidine;

- (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine, 4-carboxylate;
- (17) Pethidine—Intermediate —C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Any substance, except those substances which are specifically listed in other schedules, which contains the following barbituric acid derivatives or combinations of these substances: (1) secobarbital; (2) hexobarbital; (3) pentobarbital; (4) amobarbital.

(e) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system;

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

“Sec. -11 Schedule III Tests. A substance shall be placed in Schedule III if the substance has a degree of danger or probable danger less than the substances listed in Schedules I and II according to the determination made pursuant to Section -5.

“Sec. -12 Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a stimulant effect on the central nervous system;

- (1) Phenmetrazine and its salts;
- (2) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other Schedules;
- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methypylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;

- (10) Sulfonmethane.
- (d) Nalorphine.
- (e) Pentazozine
- (f) Apomorphine
- (g) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
 - (6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
 - (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.
- (f) The department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

“Sec. -13. Schedule IV Tests. A substance shall be placed in Schedule IV if the substance has a degree of danger or probable danger less than the

substances listed in Schedule III according to the determination made pursuant to section -5.

“Sec. -14. Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) The department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the degree of danger or probable danger of the substances which have a depressant effect on the central nervous system.

“Sec. -15. Schedule V Tests. A substance shall be placed in Schedule V if it has a degree of danger or probable danger less than the substances listed in Schedule IV according to the determination made pursuant to Section -5.

“Sec. -16. Schedule V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

“Sec. -17. Republishing of schedules. The department shall republish the schedules semi-annually for two years from the effective date of this chapter, and thereafter annually.

“PART III. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES

“§ -18 Rules. The department may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, prescription, and dispensing of controlled substances within this State.

“§ -19 Registration requirements. (a) Every person who manufactures, distributes, prescribes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State, must obtain annually a registration issued by the department in accordance with its rules.

(b) Persons registered by the department under this chapter to manufacture, distribute, prescribe, dispense, store, or conduct research with controlled substances may possess, manufacture, distribute, prescribe, dispense, store, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this part.

(c) Except as otherwise provided, the following persons need not register and may lawfully possess controlled substances under this chapter:

- (1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;
- (2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The department may waive by rule the requirement for registration or filing of certain manufacturers, distributors, prescribers, or dispensers if it is consistent with the public health and safety and if the department states the specific reasons for such waiver and the time period for which it is to be valid.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with the department's rule.

“Sec. -20 Registration.

(a) The department shall register an applicant to manufacture, dispense, prescribe, or distribute controlled substances included in Sections -8, -10, -12, -14, and -16 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department shall consider the following factors:

- (1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
- (2) compliance with applicable State and local law;
- (3) any convictions of the applicant under any Federal and State laws relating to any controlled substance;
- (4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
- (5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
- (6) suspension or revocation of the applicant's Federal registration to manufacture, distribute, prescribe or dispense controlled substances as authorized by Federal law; and
- (7) any other factor relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture, dispense, prescribe, and distribute controlled substances in schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense or to prescribe any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or to prescribe or conduct research under the law of this State. The department need not require separate registration under this part for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the registrant is already registered under this part in another capacity. Practitioners registered under Federal law to conduct research with schedule I substances may conduct research with schedule I substances within this State upon furnishing the department evidence of that Federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the Federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

“§ -21 Revocation and suspension of registration. (a) A registration under section -20 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department upon a finding that the registrant:

- (1) has furnished false or fraudulent material information in any application filed under this chapter;
- (2) has been convicted of a felony under any State or Federal law relating to any controlled substance; or

(3) has had his Federal registration suspended or revoked to manufacture, distribute, prescribe or dispense controlled substances.

(b) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the department suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the State.

(d) The department shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

“§ -22 Order to show cause.

(a) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the department at a time and place not less than 30 days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 91 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The department may suspend any registration simultaneously with the institution of proceedings under section -21, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

“§ -23 Records of registrants. Persons registered to manufacture, distribute, prescribe or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and with any additional rules the department issues.

“§ -24. Filing requirements. All persons registered to manufacture, distribute, or dispense controlled substances and all persons who transport, warehouse, or otherwise handle controlled substances, shall file with the department on forms and within the time and manner prescribed by the department, copies of order, receipt and distribution of schedule I and schedule II

controlled substances and other controlled substances designated by the department, showing the amounts of such controlled substances ordered, received, distributed, transported, warehoused, or otherwise handled.

“§ -25 Prescriptions.

(a) No controlled substance in Schedule II may be dispensed without a written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the department Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section -23. No prescription for a Schedule II substance may be refilled.

(c) A controlled substance included in Schedule III or IV, which is a prescription drug as determined under chapter 328, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

PART IV. OFFENSES & PENALTIES

“Sec. -27 Prohibited Acts B—Penalties. (a) It is unlawful for any person:

- (1) who is subject to part III to distribute or dispense a controlled substance in violation of section -25; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special official written order approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.
- (2) who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or another authorized person.
- (3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;
- (4) to refuse any lawful entry into any premises for any inspection authorized by this chapter; or
- (5) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the

purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than \$5,000, or both.

“§ -28 Prohibited Acts C—Penalties.

(a) It is unlawful for any person knowingly or intentionally:

- (1) to distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section -24 of this chapter;
- (2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
- (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or
- (5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, impress, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than five years, or fined not more than \$5,000, or both.

“§ -29 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to , and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

“PART V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

“§ -35 Powers of enforcement personnel.

(a) Any officer or employee of the department designated by the director of health may:

- (1) carry firearms in the performance of his official duties;
- (2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this State;
- (3) make arrests without warrant for any offense under this chapter committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony;
- (4) make seizures of property pursuant to this chapter; or

- (5) perform other law enforcement duties as the director of health designates.

“§ -36 Administrative inspections and warrants.

(a) Issuance and execution of administrative inspection warrants shall be as follows:

- (1) A judge of the circuit court, or any district magistrate within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;
- (2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (i) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
 - (ii) be directed to a person authorized by section -35 to execute it;
 - (iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
 - (iv) identify the item or types of property to be seized, if any;
 - (v) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;
- (3) A warrant issued pursuant to this Section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the war-

rant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

- (4) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.

(b) The department may make administrative inspections of controlled premises in accordance with the following provisions:

- (1) For purposes of this section only, 'controlled premises' means:
 - (i) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and
 - (ii) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.
- (2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) an officer or employee designated by the department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.
- (3) When authorized by an administrative inspection warrant, an officer or employee designated by the department may:
 - (i) inspect and copy records required by this chapter to be kept;
 - (ii) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and
 - (iii) inventory any stock of any controlled substance therein and obtain samples thereof;
- (4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
 - (i) if the owner, operator, or agent in charge of the controlled premises consents;
 - (ii) in situations presenting imminent danger to health or safety;
 - (iii) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - (iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(v) in all other situations in which a warrant is not constitutionally required;

- (5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

“§ -37 Injunctions.

(a) The circuit courts of this State may exercise jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

“§ -38 Cooperative arrangements and confidentiality.

(a) The department shall cooperate with Federal and other State agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

- (1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
- (2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local and State levels;
- (3) cooperate with the Bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make the information available for Federal, State and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and
- (4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the department in the exercise of its regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the department, nor may he be compelled in any State or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

“§ -39 Forfeitures.

(a) The following are subject to forfeiture:

- (1) all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter.
- (2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, proces-

sing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) all property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels which are used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent and;

(iii) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(5) all books, records, and research products and materials, including formulas, microfilms, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the department upon process issued by any circuit court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture, proceeding based upon this chapter;

(3) the department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the department has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the department subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the department may:

(1) place the property under seal;

(2) remove the property to a place designated by it; or

(3) require the sheriff to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this chapter the department may:

- (1) retain it for official use;
 - (2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;
 - (3) require the sheriff to take custody of the property and remove it for disposition in accordance with law; or
 - (4) forward it to the Bureau for disposition.
- (f) Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the State. Controlled substances listed in schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and shall be summarily forfeited to the State.
- (g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.
- (h) The failure, upon demand by the department, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

“§ -40 Burden of proof; liabilities.

- (a) It is not necessary for the State to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
- (b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.
- (c) No liability is imposed by this chapter upon any authorized State, county or municipal officer, engaged in the lawful performance of his duties.

“§ -41 Judicial review. All final determinations, findings and conclusions of the department under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to chapter 91. Findings of fact by the department, if supported by substantial evidence, are conclusive.

“§ -42 Education and research.

- (a) The department shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:
- (1) promote better recognition of the problems of misuse and abuse of

controlled substances within the regulated industry and among interested groups and organizations;

- (2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) disseminate the result of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and,
- (6) assist in the education and training of State and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The department may enter into contracts for educational and research activities without performance bonds and without regard to chapter 103.

(c) The department may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(d) The department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from State prosecution for possession and distribution of controlled substances to the extent of the authorization."

Section 2. Pending Proceedings.

(a) Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted is similar to one set out in Part IV of the chapter adopted by this Act, then the penalties under Part IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this Act are not affected by this Act.

(c) All administrative proceedings pending under prior laws which are superseded by this Act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the Act. Any substance controlled under prior law which is not listed within schedules I through V of the chapter adopted by this Act is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The department shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this Act and who are registered or licensed by the State.

(e) This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Section 3. **Continuation of Rules.** Any order or rule promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Section 4. **Uniformity of Interpretation.** This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

Section 5. **Short Title.** This Act may be cited as the Uniform Controlled Substances Act.

Section 6. **Severability.** If any provision of the chapter adopted by this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Section 7. Chapter 329 and Part V of Chapter 328 are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this Act and except for the following sections which are to be appropriately renumbered by the revisor of statutes:

- (1) Section 329-14.
- (2) Section 329-22.

Section 8. This Act shall take effect on January 1, 1973 only if H. B. 20 in any form passed by the Legislature, Regular Session 1972, becomes an Act. In that event, provisions of H. B. 20 referring to chapter 329 shall be deemed to refer to this Act, except that references in chapter 13 of H. B. 20 relating to HRS chapter 329 and part V of chapter 328 shall be superseded by this Act.

(Approved April 11, 1972.)

ACT 11

S. B. NO. 1014

A Bill for an Act Relating to Divorce.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 580-41, Hawaii Revised Statutes, as amended is hereby further amended to read as follows:

"Section 580-41. Divorce. The family court shall decree a divorce from the bond of matrimony upon the application of either party when the court finds:

- (1) the marriage is irretrievably broken;
- (2) the parties have lived separate and apart under a decree of separation from bed and board entered by any court of competent jurisdiction,

the term of separation has expired, and no reconciliation has been effected;

- (3) the parties have lived separate and apart for a period of two years or more under a decree of separate maintenance entered by any court of competent jurisdiction, and no reconciliation has been effected; or
- (4) the parties have lived separate and apart for a continuous period of two years or more immediately preceding the application, there is no reasonable likelihood that cohabitation will be resumed, and the court is satisfied that, in the particular circumstances of the case, it would not be harsh and oppressive to the defendant or contrary to the public interest to a divorce on this ground on the complaint of the plaintiff.

SECTION 2. Section 580-42, Hawaii Revised Statutes, is repealed.

SECTION 3. A new section is added to the Hawaii Revised Statutes to read as follows:

“Section 580-42. Irretrievably broken. (a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(b) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall

- (1) Make a finding whether the marriage is irretrievably broken, or
- (2) Continue the matter for further hearing not less than thirty or more than sixty days later, or as soon thereafter as the matter may be reached on the court’s calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.”

SECTION 4. Section 580-45, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 580-45 Decree. If after a full hearing, the court or judge is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court or judge in the decree. In case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of the decree.

SECTION 5. Section 580-43, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 580-48, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 580-49, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 580-49. Support of insane spouse after divorce. In every suit for divorce where a decree is granted to the plaintiff and the defendant is insane at the time of the decree, the court may, at any time after entering the decree, re-

visé and alter the same so far as the support and maintenance of the insane person is concerned, and may provide for such maintenance by the plaintiff out of any property or earnings acquired by the plaintiff subsequently, as well as previously, to the decree of divorce. The court making the order for maintenance, may, in its discretion, require the plaintiff to give security to the satisfaction of the court for the faithful execution of the same."

SECTION 8. Section 580-50, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 580-53, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 580-54, Hawaii Revised Statutes, is repealed.

SECTION 11. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 12. This Act shall take effect on July 1, 1972.

(Approved April 11, 1972.)

ACT 12

H. B. NO. 1748-72

A Bill for an Act Relating to Destroyed, Defaced, Lost or Stolen Bonds; Lost Coupons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 39-31, Hawaii Revised Statutes, is amended to read:

"Sec. 39-31 Duplicates. Whenever it appears to the director of finance of the State by clear proof satisfactory to him that any interest bearing bond of the State has, without bad faith upon the part of the owner, been lost, stolen, destroyed, wholly or in part, or so defaced as to impair its value to the owner; the bond is identified by number and description, and the request for issuance of a new bond was made before the director had notice that the bond had been acquired by a bona-fide purchaser, the director shall, under such conditions and upon such security as prescribed in section 39-33 cause to be issued a duplicate thereof, with remaining unpaid coupons attached and so marked as to show the original number of the bond lost, stolen, destroyed or defaced and the date thereof.

"All duplicate bonds issued in place of bonds lost, stolen, destroyed or defaced shall be lithographed or steel engraved, and shall be signed by the director of finance of the State, and by the comptroller of the State, and be sealed with the seal of the department of budget and finance. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the director of finance of the State.

*Edited accordingly.

"When the lost, stolen, destroyed or defaced bond appears to have been of a class or series that has been called or will be called in for redemption or will mature within a period of one year following the date of application for a duplicate bond, instead of issuing a duplicate bond therefor, the director may, under such conditions and upon such security, if any, as he may prescribe, pay the bond at its call date with interest if it is already called for redemption or if it is to be called for redemption, or will mature within the period of one year, issue a transferable certificate of ownership to the applicant, and pay on the certificate the call price of the bond represented thereby together with interest called for by the lost, stolen, destroyed or defaced bond on the date of its call or its original maturity upon surrender of the certificate of ownership. All transferable certificates of ownership which may be issued pursuant to the terms hereof shall be in such form as the director may prescribe and shall be signed by the director and by the comptroller of the State and sealed with the seal of the department of budget and finance.

"All expenses necessary for the providing of any duplicate bond or certificate of ownership shall be borne by the owner thereof."

SECTION 2. Section 39-32, Hawaii Revised Statutes, is amended to read:

"Sec. 39-32 Payment to be made. Whenever any interest coupons on any bonds issued by the State are lost, destroyed, defaced, or stolen, any person being the legal holder of these coupons may secure payment of the same, notwithstanding the loss, destruction, defacement, or theft, in the manner provided in section 39-33. This part shall apply also to interest coupons lost, destroyed, defaced, or stolen prior to May 1, 1929."

SECTION 3. Section 39-33, Hawaii Revised Statutes, is amended to read:

"Sec. 39-33 Method of issuance and payment. An applicant for issuance of a new bond or for payment shall make written application, under oath, in such form as the director of finance of the State shall prescribe, stating facts definitely identifying the bonds or coupons and showing the loss, destruction, or theft of the same, and the ownership of the same by the person applying, and shall present such further evidence as the director may reasonably require to establish the identity of the bonds or coupons, their loss, destruction, defacement, or theft, and the ownership of the same by the applicant."

"The director, if he is satisfied that the person is the legal holder of the bonds or coupons, that the same have been lost, destroyed, defaced, or stolen, and that the same has not been acquired by a bona-fide purchaser, shall thereupon, except as hereinafter provided, issue a new bond or pay to the applicant the amount of the lost, destroyed, defaced, or stolen bonds or coupons, the payments to be made out of the general fund of the State by warrant of the comptroller of the State; provided, that no such issuance or payment shall be made until and unless (1) at least six months shall have elapsed after the date of application during which time the bonds or coupons shall not have been presented and paid to a holder in due course thereof; and (2) the applicant shall have executed and delivered to the director a legal and sufficient bond

in the amount of twice the aggregate sum called for by the lost, destroyed, defaced, or stolen bonds or coupons, in such form and with such sufficient surety or sureties as shall be satisfactory to the director, conditioned to indemnify and save harmless the State from any loss on account of the bonds or coupons so claimed to have been lost, destroyed, defaced, or stolen."

SECTION 4. Section 39-34, Hawaii Revised Statutes, is amended to read:

"Sec. 39-34 Disputed ownership. If there are two or more claimants claiming adversely, each to the other or others, to be the holder in due course of the bonds or coupons alleged to have been lost, destroyed, defaced, or stolen, the director of finance may, in his discretion, require the claimants, if not within the State, to appoint agents within the State to accept service of process, or otherwise to submit to the jurisdiction of the courts of the State, and may bring suit on behalf of the State in the circuit court of the first judicial circuit, against the claimants, by interpleader, for the determination of the claimant or claimants entitled to the payment of the bonds or coupons. Jurisdiction is hereby conferred upon the court to hear and determine, without a jury, the suits and to determine whether any of the claimants is entitled to the payment, and, if so, which of the claimants is so entitled; provided, that the determination shall not dispense with the conditions prescribed by section 39-33 requiring six months to elapse, and the giving of a bond, before the payment of the claims. The costs of the suit shall be borne by the claimants, and the court may decree the payment of such costs by any of the unsuccessful claimants, or the apportionments thereof, as may be deemed just. The decision of the court shall be appealable to the supreme court."

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed materials, or the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved April 11, 1972.)

ACT 13

H. B. NO. 434

A Bill for an Act Relating to Workmen's Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-96, Hawaii Revised Statutes, is amended to read:

"Section 386-96 Reports of physicians, surgeons, and hospitals. Any physician, surgeon or hospital that has given any treatment or rendered any service to an injured employee shall make a report of the injury and treatment

*Edited accordingly.

on forms prescribed by and to be obtained from the department as follows:

- (1) Within seven days after the date of first attendance or service rendered, a report shall be made to the department and to the employer of the injured employee in the manner prescribed by the department.
- (2) Interim reports to the same parties and in the same manner as prescribed in paragraph (1) shall be made at intervals of twenty-one days or less during continuing treatment.
- (3) Final report to the same parties and in the same manner as prescribed in paragraph (1) shall be made within seven days after termination of treatment.

No claim under this chapter for medical or surgical treatment, or hospital services and supplies, shall be valid and enforceable unless the reports are made as provided in this section, except that the director may excuse the failure to make the report within the prescribed periods when he finds it in the interest of justice to do so.

The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one physician or surgeon should treat or examine the employee, a copy of the final report of each physician or surgeon.

Within fifteen days after being requested to do so by the injured employee or his duly authorized representative, the employer shall furnish the employee or his duly authorized representative with copies of all medical reports relating to the employee's injury which are in the possession of the employer. The copies shall be furnished at the expense of the employer. The employer shall allow the employee or his duly authorized representative to inspect and copy transcripts of depositions of medical witnesses, relating to the employee's injury, in the possession of the employer. Any employer who fails to furnish medical reports or to allow inspection and copying of transcripts of depositions of medical witnesses, as required by this paragraph shall be fined in an amount not to exceed \$100.

Deposit of the records required by the first paragraph of this section in the United States mail, addressed to the director and to the employer, within the time limit specified, shall be deemed in compliance with the requirements of this section."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Rental Rates for Flight Schools Certificated by the Federal Aviation Administration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-7, Hawaii Revised Statutes, is amended to read:

"Sec. 261-7 Operation and use privileges. (a) Under department operation. In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy on a temporary basis by license or otherwise any portion of the land under its jurisdiction which for the time being may not be required by the department so that it may put the area to economic use and thereby derive revenue therefrom.

All the arrangements shall contain a clause that the land may be repossessed by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days' notice in writing of intention to repossess.

Except as otherwise provided in this section, in each case mentioned in paragraph (1), (2), (3) and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service or thing.

(b) Under other operation. The department may, by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a) of this section.

(c) Miscellaneous fees and charges. The department may fix and reg-

ulate, from time to time, reasonable landing fees for aircraft and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide landing fee which may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators and such other classes as may be determined by the director of transportation, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature.

(d) Liens. To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(e) Buildings and land areas for flight schools; rental rates. The department may from time to time establish rentals for buildings and land areas used exclusively by flight schools certificated by the Federal Aviation Administration at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be utilized."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 17, 1972.)

ACT 15

S. B. NO. 1498-72

A Bill for an Act Relating to Wild Birds.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 191-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 191-12 Permits to take wild birds. The department of land and natural resources may make and amend rules and regulations:

- (1) Authorizing the taking and collecting of wild birds for scientific purposes or for the purpose of distributing wild birds to different localities in the State;
- (2) Authorizing the keeping of wild birds in captivity for the protection, treatment for injury or disease, propagation, and such other similar

*Edited accordingly.

purposes as are consistent with the preservation, protection and conservation of wild birds;

- (3) Authorizing the taking and destruction of such wild birds as the department may have found after investigation to be destructive to crops or otherwise harmful to agriculture, or constitute a nuisance;
- (4) Where species of wild birds are generally destructive to crops or otherwise harmful to agriculture within a district, authorizing their destruction within that area without requiring permits or reports.

The rules and regulations shall require the person or persons seeking such authority to apply for and obtain a written permit from the department. The permits may prescribe such terms and conditions as the department may deem necessary to prevent abuse of the authority granted thereby, and may be canceled by the department, after notice and hearing, for the violation of any term or condition."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor or statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1972.)

ACT 16

S. B. NO. 1193

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514-6, Hawaii Revised Statutes is hereby amended by adding another paragraph thereto to be designated "(g)" and to read as follows:

"(g) An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this will not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements."

SECTION 2. This Act shall take effect upon its approval.

(Approved April 24, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Uniform Partnership Act.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. PRELIMINARY PROVISIONS

SECTION 1. Name of act. This Act may be cited as the Uniform Partnership Act.

SECTION 2. Definition of terms. In this Act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

SECTION 3. Interpretation of knowledge and notice. (1) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence.

SECTION 4. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) The law of estoppel shall apply under this Act.

(3) The law of agency shall apply under this Act.

(4) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This Act shall not be construed so as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

SECTION 5. Rules for cases not provided for in this Act. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

PART II. NATURE OF A PARTNERSHIP

SECTION 6. Partnership defined. (1) A partnership is an association (including a joint venture) of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this Act, unless such association would have been a partnership in this State prior to the adoption of this Act; but this Act shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

SECTION 7. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

- (1) Except as provided by section 16 persons who are not partners as to each other are not partners as to third persons.
- (2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.
- (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
- (4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
 - (a) As a debt by installments or otherwise,
 - (b) As wages of an employee or rent to a landlord,
 - (c) As an annuity to a widow or representative of a deceased partner,
 - (d) As interest on a loan, though the amount of payment vary with the profits of the business,
 - (e) As the consideration for the sale of a good will of a business or other property by installments or otherwise.

SECTION 8. Partnership property. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

PART III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

SECTION 9. Partner agent of partnership as to partnership business.

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,
- (b) Dispose of the good-will of the business,
- (c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,
- (d) Confess a judgment,
- (e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

SECTION 10. Conveyance of real property of the partnership. (1) Where title to real property is in the partnership name, any partner can convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the

equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

SECTION 11. Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this Act is evidence against the partnership.

SECTION 12. Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

SECTION 13. Partnership bound by partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

SECTION 14. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

SECTION 15. Nature of partner's liability. All partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

SECTION 16. Partner by estoppel. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

SECTION 17. Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

PART IV. RELATIONS OF PARTNERS TO ONE ANOTHER

SECTION 18. Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

- (a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.
- (b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.
- (c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.
- (d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.
- (e) All partners have equal rights in the management and conduct of the partnership business.
- (f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.
- (g) No person can become a member of a partnership without the consent of all the partners.

- (h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

SECTION 19. Partnership books. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

SECTION 20. Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

SECTION 21. Partner accountable as a fiduciary. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

SECTION 22. Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,
- (b) If the right exists under the terms of any agreement,
- (c) As provided by section 21,
- (d) Whenever other circumstances render it just and reasonable.

SECTION 23. Continuation of partnership beyond fixed term. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

PART V. PROPERTY RIGHTS OF A PARTNER

SECTION 24. Extent of property rights of a partner. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

SECTION 25. Nature of a partner's right in specific partnership prop-

erty. (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

- (a) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.
- (b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.
- (c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.
- (d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.
- (c) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

SECTION 26. Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

SECTION 27. Assignment of partner's interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

SECTION 28. Partner's interest subject to charging order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, di-

rections, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

- (a) With separate property, by any one or more of the partners, or
- (b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this Act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

PART VI. DISSOLUTION AND WINDING UP

SECTION 29. Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

SECTION 30. Partnership not terminated by dissolution. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

SECTION 31. Causes of dissolution. Dissolution is caused:

- (1) Without violation of the agreement between the partners,
 - (a) By the termination of the definite term or particular undertaking specified in the agreement,
 - (b) By the express will of any partner when no definite term or particular undertaking is specified,
 - (c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,
 - (d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;
- (3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;
- (4) By the death of any partner;
- (5) By the bankruptcy of any partner or the partnership;
- (6) By decree of court under section 32.

SECTION 32. Dissolution by decree of court. (1) On application by or for a partner the court shall decree a dissolution whenever:

- (a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,
- (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
- (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
- (d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
- (e) The business of the partnership can only be carried on at a loss,
- (f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 27 or 28,

- (a) After the termination of the specified term or particular undertaking,
- (b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

SECTION 33. General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

- (1) With respect to the partners,
 - (a) When the dissolution is not by the act, bankruptcy or death of a partner; or
 - (b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires.
- (2) With respect to persons not partners, as declared in section 35.

SECTION 34. Right of partner to contribution from co-partners after dissolution. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

- (a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or
- (b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

SECTION 35. Power of partner to bind partnership to third persons after dissolution. (1) After dissolution a partner can bind the partnership except as provided in paragraph (3).

- (a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
- (b) By any transaction which would bind the partnership if dissolution

had not taken place, provided the other party to the transaction

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1bII).

(4) Nothing in this section shall affect the liability under section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

SECTION 36. Effect of dissolution on partner's existing liability. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, know-

ing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

SECTION 37. Right to wind up. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

SECTION 38. Rights of partners to application of partnership property. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36 (2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

- (a) Each partner who has not caused dissolution wrongfully shall have,
 - (I) All the rights specified in paragraph (1) of this section, and
 - (II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.
- (b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities.
- (c) A partner who has caused the dissolution wrongfully shall have:
 - I. If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2aII), of this section,
 - II. If the business is continued under paragraph (2b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascer-

tained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

SECTION 39. Rights where partnership is dissolved for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

- (a) To a lien on, or a right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and
- (b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and
- (c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

SECTION 40. Rules for distribution. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- (a) The assets of the partnership are:
 - I. The partnership property,
 - II. The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.
- (b) The liabilities of the partnership shall rank in order of payment as follows:
 - I. Those owing to creditors other than partners,
 - II. Those owing to partners other than for capital and profits,
 - III. Those owing to partners in respect of capital,
 - IV. Those owing to partners in respect of profits.
- (c) The assets shall be applied in order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.
- (d) The partners shall contribute, as provided by section 18(a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.
- (e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.
- (f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the ex-

tent of the amount which he has paid in excess of his share of the liability.

- (g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.
- (h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.
- (i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:
 - I. Those owing to separate creditors,
 - II. Those owing to partnership creditors,
 - III. Those owing to partners by way of contribution.

SECTION 41 Liability of persons continuing the business in certain cases. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership

affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

SECTION 42. Rights of retiring or estate of deceased partner when the business is continued. When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41 (1, 2, 3, 5, 6), or section 38 (2b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41(8) of this Act.

SECTION 43. Accrual of actions. The right to an account of his interest shall accrue to any partner, or his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

PART VII. MISCELLANEOUS PROVISIONS

SECTION 44. Repeal. All acts or parts of acts inconsistent with this Act are repealed or amended to conform to this Act.

SECTION 45. Effective date. This Act shall take effect on January 1, 1973.

(Approved April 24, 1972.)

A Bill for an Act Relating to Operation of a Vehicle without a Certificate of Inspection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-25, Hawaii Revised Statutes, is amended by modifying the punishment provisions thereunder to read as follows:

"§286-25 Operation of a vehicle without a certificate of inspection. Whoever operates, permits the operation of, causes to be operated, or parks any vehicle on a public highway without a current official certificate of inspection, issued under section 286-26(d), shall be fined not more than \$100 or imprisoned not more than thirty days or both."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the Revisor of Statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 1, 1972.)

A Bill for an Act Relating to Priority in the Appointment of Administrators of Decedents' Estates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 531-13, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 531-13 Appointment of administrators, priority. In the appointment of administrators upon the property of deceased persons, the following order of priority shall be observed:

- (1) The husband of a deceased wife;
- (2) The wife of a deceased husband;
- (3) The children being major;
- (4) The parent of a deceased child, whether major or minor;
- (5) The brothers and sisters of the deceased;
- (6) The cousins germane of the deceased;
- (7) Any bona fide creditor applying for administration;

Provided, the judge may for satisfactory cause disregard the order of priority. If neither the surviving spouse nor any child being major wish to accept appointment as administrator, the surviving spouse or child may nominate another to act as administrator, and the person nominated may be appointed by the judge without regard to the order of priority set forth herein."

*Edited accordingly.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 1, 1972.)

ACT 20

S. B. NO. 1429-72

A Bill for an Act Relating to Unadministered Small Estates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 531-55, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 531-55 Duties of clerk and distribution. The clerk shall make diligent effort to ascertain the names and whereabouts of the heirs-at-law, or the whereabouts of the devisees or legatees of the deceased person and present evidence relating thereto to the court having jurisdiction of the proceedings. After the expiration of sixty days after the publication the clerk shall pay or distribute the money, funds, or property of the estate, or any balance thereof, after the payment of creditors' claims presented within the time limited in section 531-54, either as an allowance for the support and maintenance of the surviving spouse or the dependents of the deceased or both, as authorized by the court or to or among such persons as may be found by the judge of the court sitting at chambers in probate, to be the persons entitled thereto as legatees, devisees, or distributees, the share of any hospitalized mentally ill or mentally deficient or epileptic to be paid to the institution of which he is a patient as a ward of the State for his maintenance and care and in case of a minor heir, if his share is less than \$500, to his natural guardian or to some suitable person having the maintenance and care of the minor as trustee for the minor to be used for the care and benefit of the minor and upon filing a proper receipt for the payment shall be thereby relieved, acquitted, and discharged from any and further liability therefor."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 1, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Termination of Guardianships of Minors.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 551-62, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 551-62 By marriage of minor ward; termination, re insane or spendthrift ward. The marriage of any person who is under guardianship as a minor, operates as a legal discharge to the minor's guardian so far as the guardianship of the person of the minor is concerned. The guardian of any insane person, or spendthrift, may be discharged by any judge, when it appears to him, on the application of the ward, or otherwise, that the guardianship is no longer necessary."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.
 (Approved May 1, 1972.)

A Bill for an Act Relating to the Employees' Retirement System.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-83, Hawaii Revised Statutes, is amended to read:

"Sec. 88-83 Election of mode of retirement allowance. Maximum allowance: Upon retirement, any member may elect to receive the maximum retirement allowance to which he is entitled computed in accordance with the provisions described under sections 88-74, 88-76, 88-80 of this part and in the event of his death, there shall be paid to his beneficiary otherwise to his estate, the difference between the balance of his accumulated contributions at the time of his retirement and the retirement allowance paid or payable to him prior to death.

"In lieu of this maximum allowance, he may elect to receive his retirement allowance under any one of the optional plans described below, which shall be actuarially equivalent to the maximum allowance.

"Option 1: The member may elect to receive a lesser retirement allowance during his lifetime. At his retirement, there shall be established an amount of initial insurance which shall be computed on the basis of actuarial factors adopted by the board of trustees. Upon the death of the retirant, any balance remaining in the initial insurance reserve after deducting the retire-

*Edited accordingly.

ment allowance paid to the retirant prior to death, shall be paid to his beneficiary, otherwise to his estate. In lieu of the lump sum balance, the beneficiary may elect to receive payment in one of the following ways: (1) an allowance for life based on the value of the balance provided that the allowance is not less than \$10 per month; or (2) cash payment in part and a reduced allowance for life based on the value of the remaining balance provided that the allowance is not less than \$10 per month."

"Option 2: The member may elect to receive a lesser retirement allowance during his lifetime and have such allowances continued after his death to his beneficiary during the lifetime of such person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant."

"Option 3: The member may elect to receive a lesser retirement allowance during his lifetime and have one-half of such allowance continued after his death to his beneficiary during the lifetime of such person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant."

"Option 4. The member may elect to receive a lesser retirement allowance during his lifetime and provide some other benefit to his beneficiary in accordance with his own specification; provided, however, that such election shall be certified by the actuary to be the actuarial equivalent of his retirement allowance and shall be approved by the board."

"Option 5: The member may elect to receive the balance of his accumulated contributions at the time of retirement in a lump sum and, during his lifetime a retirement allowance equal to the maximum retirement allowance reduced by the actuarial equivalent of these contributions. Upon the death of the retirant, all further payments shall cease. Only a member retiring for service having at least ten years of credited service or for disability may elect this mode of retirement."

"To receive benefits, the beneficiary must have been designated by the member in such form and manner as is prescribed by the board.

"In the event of the death of the retirant within one year after the date of retirement, his beneficiary may elect to receive either the death benefits under the mode of retirement selected, or in lieu thereof, such benefits as would have been paid had the retirant died immediately prior to retirement, less any payments which the retirant received.

"Any election of a mode of retirement allowance shall be irrevocable."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Any provision in Chapter 88, Hawaii Revised Statutes, to the contrary notwithstanding, any employee who was subject to the federal retirement system and was a member of the employees' retirement system of the State of Hawaii on July 25, 1971, shall be entitled to all benefits which accrued from such membership and shall be permitted to continue membership in the system with all the benefits thereof, including the right to acquire as membership service credit pursuant to Section 88-59, Hawaii Revised Statutes, the period of service for which he was denied membership in the system because of being subject to the federal retirement system, provided that such election shall be made before January 1, 1973.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

A Bill for an Act Relating to Safety Features in Certain Buildings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to impose measures that will provide a degree of public safety from fire by requiring that in certain buildings with automatically operating elevators, at least one elevator shall be arranged for use by firemen.

SECTION 2. Chapter 132, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 132- Automatic elevators. (a) Every owner, as defined in section 132-9, of a building in the State with more than five floors above or below ground, in which there is an elevator having automatic operation shall provide that one or more elevators in such building shall be arranged for use by firemen as follows:

- (1) A key-operated switch with light jewel shall be provided adjacent to the elevator at the street floor landing and may be provided at other landings subject to the discretion of the fire marshal. The key-operated switch shall remove the elevator from normal service and place it on firemen's service.
- (2) The key-operated switch shall, when operated, cancel existing car calls, prevent registration of further car calls, prevent the opening of the elevator doors except at the landing at which the switch is located, and cause the car to travel to that landing bypassing other landing calls. The light jewel shall be illuminated when the car is re-

turning to the firemen's landing in response to the operation of the key-operated switch.

- (3) When the car arrives at the firemen's landing, the doors shall open and remain open until closed by the operation of the elevator from the car.
- (4) A key-operated switch shall be provided in the car which can be operated only by the key which operates the firemen's landing switch, and which, when operated, shall permit operation of the elevator only from the car-operating buttons and cause the elevator to bypass landing calls.

(b) The installation, operation, and maintenance of the safety feature prescribed in subsection (a) shall comply with Appendix E of the American National Standard Safety Code for Elevators A17.1-1071, as amended from time to time, and with rules and regulations promulgated in conformity with chapter 91 by the fire marshal.

(c) The fire marshal shall, after consultation with the director of labor and industrial relations as administrator of the industrial safety law under chapter 376, promulgate rules and regulations in conformity with chapter 91 necessary for the purposes of this section.

(d) Any person who violates this section shall be subject to the penalties provided in section 132-15."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval; provided that the owner of a building affected by this Act on which construction has been completed on the effective date of this Act need not comply with this Act until January 1, 1974.

(Approved May 9, 1972.)

ACT 25

S. B. No. 770

A Bill for an Act Relating to Bicycles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes are amended by adding two new sections to be appropriately numbered and to read as follows:

"Sec. Defacing serial numbers, etc., of bicycles. It shall be unlawful for any person to wilfully deface, destroy, or alter the serial number, a component part number, or identification mark of any bicycle, so placed or stamped on any bicycle by the manufacturer for the purpose of identifying the bicycle or its component parts.

*Edited accordingly.

This section does not prohibit the restoration by an owner of an original mark or number, when the restoration is authorized in writing by the county treasurer or director of finance, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new bicycles or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than \$500.

Sec. Bicycle dealers, records required. All persons selling new bicycles to others as a business shall keep a record for four years after the sale of a bicycle of the name of the purchaser, and the serial number, description, and make of the bicycle sold to the purchaser. This record may be inspected by the police during reasonable business hours."

SECTION 2. Section 249-14, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 249-14 Bicycle Tax. All bicycles used for the conveyance of persons shall be subject to an annual tax of \$1 each to be paid by the owners thereof to the county treasurer or his deputy. This tax shall become due and payable on January 1 and shall be delinquent on March 1 of each year. Upon receipt of the tax, the treasurer or his deputy shall number and register each bicycle, for which the tax is paid, in the owner's name and furnish the owner with a metallic tag for the bicycle with number and year marked thereon, charging therefor the sum of 10 cents, which tag the owner shall attach to the bicycle. Upon initial registration by an owner or transferee, the treasurer or his deputy shall require proof of ownership and shall examine the bicycle to verify the correct serial number and description contained in the proof of ownership and application for registration. The metallic tags shall be in such form as the treasurer of the county shall from time to time prescribe. It shall be the duty of the board of supervisors or the city council of each county to purchase a sufficient number of such tags for use therein."

SECTION 3. Section 249-18, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 249-18 Highway fund. All taxes collected under this chapter shall be deposited in a fund to be known as the "highway fund" and shall be expended in the county in which the taxes are collected for the following purposes:

- (1) For acquisition, designing, construction, improvement, repair, and maintenance of public roads and highways, including without restriction of the foregoing purposes, costs of new land therefor, of permanent storm drains or new bridges, as well as repairs or additions to storm drains or bridges;
- (2) For installation, maintenance, and repair of street lights and power, and other charges for street lighting purposes, including replacement of old street lights, on county-maintained public roads and highways;
- (3) For purposes and functions connected with traffic control and preservation of safety upon the public highways and streets;

- (4) For payment of interest on and redemption of bonds issued to finance highway and street construction and improvements;
- (5) In the case of the city and county of Honolulu, for appropriation for the police department up to the sum of \$500,000. No expenditures shall be made out of this fund which will jeopardize federal aid for highway construction;
- (6) For purposes and functions connected with mass transit; and
- (7) For the design and construction of bikeways."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 26

S. B. NO. 802

A Bill for an Act Relating to Personal History Statements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part I of chapter 85, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 27

S. B. NO. 1344-72

A Bill for an Act Relating to Payment of Wages and other Compensation and Amending Chapter 388, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Sections 388-31, 388-32, and 388-33, Hawaii Revised Statutes, are hereby repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 28

S. B. NO. 1355-72

A Bill for an Act Relating to Abandoned Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 267A of the Hawaii Revised Statutes, is amended as follows:

- (1) By designating Section 267A-1 to 267A-7 as Part I entitled "VES-

*Edited accordingly.

SELS ABANDONED ON PUBLIC AND PRIVATE PROPERTY GENERALLY;"

(2) By adding to Part I the following new sections to be appropriately designated and to read:

"Sec. 267A Derelict vessel. A vessel which has been left unattended for a continuous period of more than twenty-four hours is a derelict if:

- (1) the vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or
- (2) the vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or rules and regulations having the force and effect of law, or the vessel has been left on private property without authorization of the owner or occupant of the property and if:
 - (A) the vessel's certificate of number or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department of transportation or the U.S. Coast Guard; or
 - (B) the last registered owner of record disclaims ownership and the current owner's name or address cannot be determined; or
 - (C) the vessel identification numbers and other means of identification have been removed so as to nullify efforts to locate or identify the owner; or
 - (D) the vessel registration records of the department of transportation and the marine document records of the U.S. Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined.

Sec. 267A Disposition of derelict vessel. The director of transportation may cause a derelict vessel to be immediately taken into custody. Upon taking custody of a derelict vessel the director shall concurrently (1) publish a notice of intended disposition, once, in a newspaper of general circulation; (2) when possible, post a notice of intended disposition on the vessel; and (3) serve a duplicate original of the notice of intended disposition by certified mail, return receipt requested on (A) the registered owner of the vessel, if known, at his last known address or the address on record in the U.S. Coast Guard, and (B) all lien holders who have filed a financing statement indexed in the name of the registered owner in the bureau of conveyances or who are shown on the records of the department of transportation or U.S. Coast Guard. If the vessel is not repossessed within twenty days after the publication or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder.

If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed.”

(3) By adding a new Part II to be appropriately designated and to read:

**“PART II. VESSELS ABANDONED ON BUSINESS PREMISES
OF PERSONS ENGAGED IN REPAIR BUSINESS**

Sec. 267A Disposition of vessels by persons in vessel repair business. When any person abandons a vessel upon the premises of a vessel repair business, the owner of the business or his authorized representative may sell or dispose of the vessel in accord with this part.

Sec. 267A When vessel deemed abandoned. A vessel shall be deemed to be abandoned upon satisfaction of all the following conditions:

(1) The service requested or required by a person whose vessel is towed or brought to a vessel repair business, such as towing and rendering estimates of the cost of repairs, has been performed; and

(2) No authorization is given to perform any further service respecting the vessel but the vessel is left on the repair business premises; and

(3) The owner of the repair business or his authorized representative has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business and the address on record in the department of transportation or U.S. Coast Guard, and to any person with a recorded interest in the vessel stating that, if the vessel is not repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the vessel and its location. The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined; and

(4) The vessel is not repossessed within the above-mentioned thirty-day period.

Sec. 267A Sale or disposition of vessel. When a vessel is abandoned, the owner of the vessel repair business, or his authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five days after the publication of the advertisement.

Sec. 267A Disposition of proceeds. The authorized seller of the vessel shall be entitled to the proceeds of the sale to the extent that compensation is due him for services rendered in respect of the vessel, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. A lien holder shall receive priority of payment from the balance to the extent of his lien. Any remaining balance shall be forwarded to the registered owner of the vessel, if he can be found. If he cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner of the vessel,

ACT 29

if a proper claim is filed therefor within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a State realization.

Sec. 267A Effect of transfer of title. The transfer of title and interest by sale under this part is a transfer by operation of law; provided that a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 29

S. B. NO. 1547-72

A Bill for an Act Relating to Political Activity of Department of Health Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-6, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 30

S. B. NO. 1716-72

A Bill for an Act to Amend Chapter 134-31, Hawaii Revised Statutes, Relating to Firearms, Dealers' Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 134-31, Hawaii Revised Statutes, is hereby amended to read as follows:

"134-31 License to sell and manufacture firearms; fee. Any person desiring to engage in the business to sell and manufacture firearms for sale in the State either at wholesale or retail, shall annually file an application for a license therefor with the director of finance of each county of the State. The annual fee for the issuance of such license shall be \$10.00 and shall be payable to said director of finance. A license issued hereunder shall expire on June 30 next following the date of issuance of the license unless sooner terminated. Application for renewal of license shall be filed on or before June 30 of each year."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Charges Collectible by Industrial Loan Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 408-15, Hawaii Revised Statutes, is amended to read as follows:

Sec. 408-15 Interest rates; other charges; refunds.

(a) No industrial loan company shall directly or indirectly charge, contract for, collect, or receive any interest, discount, fees, charges, or other consideration on any loan made by it except as provided by this section.

(b) Advance interest or discount. An industrial loan company may charge, contract for, receive, or collect in advance interest or discount at any rate which does not exceed the following maximum rate for the particular period and type of contract hereinafter set forth, computed in the manner set forth in Section 408-3, at the inception of the contract, to wit:

(1) Where interest is paid or deducted in advance for a period of not more than eighteen months upon any contract (whether the principal amount of the contract is payable in one payment at the end of the maturity period thereof or in installments), it shall not exceed twelve per cent a year computed in the manner set forth in section 408-3 at the inception of the contract.

(2) Where interest is payable or deducted in advance upon a contract payable in a period of more than eighteen months, it shall not exceed an amount computed in the manner set forth in section 408-3, as follows: twelve per cent a year for the first eighteen months, plus nine per cent a year for the next twelve months (or portion thereof), plus six per cent a year for the next twelve months (or portion thereof), plus three per cent a year for the next six months (or portion thereof), of such period, as the case may be.

Interest shall not be deductible in advance for more than four years.

(For example: upon a contract, the principal amount of which is \$120, payable in twenty-four months, in monthly installments of \$5, the maximum amount of interest which may be deducted in advance under this section is computed as follows:

12 per cent a year of \$120 for first 18 months	\$21.60
9 per cent a year of \$120 for next 6 months	5.40

Total interest deductible in advance from principal amount of the contract	\$27.00)
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(3) Installments, acceleration of. In addition to collecting or deducting interest in advance, as aforesaid, the company may require and receive repayment of the principal amount of the contract in uniform weekly, monthly, or other periodic installments with the privilege to the company (subject to the interest refund provisions of this section

where applicable) to declare the entire unpaid balance due and payable in the event of default in the payment of any installment.

- (4) Interest on delinquent installments. In addition to requiring and collecting interest in the manner and at the rates hereinbefore provided for, the company may also require and receive the payment of interest at not to exceed twelve per cent a year from the date of delinquency on any principal installment or portion thereof which remains unpaid on the date of maturity, of the installment where there has been no extension or deferment by mutual agreement, or where the amount extended or deferred is not paid on the due date agreed upon.

(c) Fraction of a month. In computing interest for any of the purposes of this section, or interest refunds under subsection (f), for any period, any fraction of a month shall be considered as a whole month.

(d) Where not an installment contract. Nothing in this chapter shall be deemed to prohibit an industrial loan company from lending money upon a contract to repay the principal amount at the end of the maturity period, instead of in installments, under which contract interest is either deductible in advance, or is payable in weekly, monthly or other periodic installments, or at the end of such period, provided the interest payable or paid is not in excess of the maximum prescribed by the section for loans repayable in installments of principal.

(e) Application, licensees only. No person, firm, or corporation (not holding a license issued under this chapter) shall charge, contract for, collect, or receive interest, discounts, fees, charges, or other consideration on any loan in the amount or in the manner provided in this section unless permitted so to do by other state law.

(f) Refunds; prepayment. On a contract which has been discounted or on which interest has been collected in advance, and which is then paid or refinanced or on which judgment is then obtained before maturity, the industrial loan company involved shall refund to the borrower on account of unearned discount or interest an amount computed, on that portion of the principal amount which has not yet matured, at the same rate of discount or interest as was charged at the time the contract was made, for the term of the contract remaining after the date of the payment or after the date of the judgment; provided, that no refund less than 25 cents need be made; and provided further, that checks issued to refund interest which are not presented for payment within three years from the date of issue may be declared cancelled and the sum thereof retained as earnings of the licensee. Each company shall permit any borrower from it to pay partially or wholly any contract or installment on a contract before the due date, if the contract has been in effect for a period of at least three months. The company shall not be required to refund any portion of the unearned discount or interest which results in a minimum discount or interest retained on the contract of less than \$15.

(g) Deferred payments, interest, etc. Any payment on account of the principal amount of a contract, which is due on a particular date, may be extended or deferred to a later date by mutual agreement, and, upon the amount

of the principal payment so extended or deferred, interest, not exceeding that permitted upon an original loan by this section, for the actual period of the extension or deferment, may be charged and may be collected in advance at the commencement of the period of extension or deferment, provided that the term and conditions of the extension or deferment, including the principal amount so extended or deferred, and the period of, and the charge for, the extension or deferment, shall be set forth in writing and signed in duplicate by the borrower and the company, one copy of the same to be kept on file with the contract and the other copy to be given to the borrower.

(h) Other charges. In addition to the interest, discount, or other charges permitted by this section, an industrial loan company shall also have power to collect in advance or otherwise from the borrower any of the following charges:

- (1) The actual taxes and fees charged by a governmental agency for recording, filing, or entering of record, any bill of sale, assignment, mortgage, chattel mortgage, or other conveyance, or any partial or complete release, discharge, or satisfaction of judgment, mortgage, lien, or other encumbrance, or any of such conveyances or instruments, of or on any real or personal property which constitutes all or a portion of the security on a contract;
- (2) Appraisal fees, and abstractors' fees, actually paid to third parties, no portion of which fees inures to the benefit of the company;
- (3) Premiums actually paid for insuring real and personal property pledged as security on a contract, and insurance premiums on the life of the borrower, provided the insurance is obtained from insurance companies authorized to do and doing business in the State under the laws thereof and provided the borrower, if the property is adequately insured for the amount of the loan, shall not be required to substitute other insurance therefor upon the property or to take out additional insurance thereon; and
- (4) Attorney's fees, if provided for in the contract, and costs of court, incurred in the collection of any contract in default.
- (5) A charge not exceeding \$10 upon the transfer of any equity under a chattel mortgage or a conditional sale contract.
- (6) Loan fees or "points" on all loans primarily secured by an interest in real property where the interest rate is computed in accordance with subsection (j) of this section; provided, that the total finance charge payable by the borrower in connection with any such loan shall include the amount of any such loan fees or "points" and shall not exceed an annual percentage rate (as defined in the Federal Truth In Lending Act and the regulations of the Federal Reserve Board promulgated thereunder) of eighteen per cent annum.

(i) Minimum discount or interest on conditional sale. When the discount or interest on a conditional sale contract of \$100 or more is less than \$15, a charge for discount or interest of \$15 shall be allowed.

(j) As an alternative to the interest authorized by subsection (b), an industrial loan company may contract for and receive interest at a rate not

exceeding one and one-half per cent per month on the unpaid principal balance of a loan, for a loan period of no longer than three years.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1972.)

ACT 32

S. B. NO. 241

A Bill for an Act Relating to Public Assistance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-29, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 346-29 Applications for public assistance; manner, form, conditions. Applications for public assistance under this chapter shall be made to the department of social services and housing by the applicant, or by someone acting in his behalf, in the manner, place, and form prescribed by the department.

No applicant shall be entitled to public assistance under this chapter who has sufficient income or other resources to provide a subsistence compatible to decency and health, or who is an inmate of any institution established primarily for tuberculosis or mental illness, or for detention or forcible confinement or correction; or who is an inmate of any public institution of a non-curative character, but an inmate of such an institution mentioned in this section may apply for assistance to begin after his discharge from the institution. In determining the needs of an applicant or recipient for public assistance, the department:

- (1) Shall disregard such amounts of earned income and resources as required or authorized by the Social Security Act or other federal acts, to receive federal matching funds and such additional amounts as these acts permit, now or in the future, to be disregarded.
- (2) Shall consider only such net income as is actually available for current use on a regular basis, and only current available resources will be considered."

SECTION 2. Section 346-37, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 346-37 No state claim for assistance. The cost of any goods or services furnished by the State or by any political subdivision of the State to a recipient under this chapter shall not constitute a lien against real or personal property of the recipient and no lien shall be taken thereof except pursuant

*Edited accordingly.

to the judgment of a court on account of medical assistance incorrectly paid on behalf of such recipient. The amount of public assistance paid to a recipient under this chapter shall not constitute a claim against the recipient or his estate except when it has been determined legally that a third party liability exists."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 1972.)

ACT 33

S. B. NO. 308

A Bill for an Act Relating to Investigations by the Attorney General.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part I of Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"**Sec. 28- .Investigations.** When the attorney general deems it advisable or necessary in the public interest or when directed to do so by the governor, he shall conduct investigations of alleged violations of law. The attorney general, his deputy, or other officer designated by him, is empowered pursuant to the rules of court to subpoena witnesses, examine them under oath, and require the production of any books, papers, documents or objects which he deems relevant or material to the inquiry. Upon application by the attorney general, obedience to the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 11, 1972.)

ACT 34

H. B. NO. 2439-72

A Bill for an Act Relating to the State Higher Education Loan Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to appropriate additional monies for the State higher educational loan fund (SHELF), established by Act 230, Session Laws of Hawaii, 1969, as a revolving fund under the administration of the board of regents of the University of Hawaii, and to amend certain provisions of chapter 304, Hawaii Revised Statutes, relating thereto.

*Edited accordingly.

SECTION 2. Section 304-92, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 304-92 Eligibility for loans; amounts. Eligibility for loans from the loan fund is limited to students at the University of Hawaii or the community colleges of the State who have been residents of the State for at least one year and are enrolled in a full-time program which culminates in the award of a degree. The amount to be loaned to a student shall be determined by the board of regents based on need for financial aid, academic promise, and deportment. In no event shall the amount loaned to any student in any school year exceed the sum of tuition and mandatory registration fees, mandatory special fees charged for the use of laboratories, mandatory fees charged for participation in student activities and privileges, the cost of required textbooks, and up to \$200 per month to defray room and board expenses."

SECTION 3. Section 304-94, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 304-94 Capacity of minors. Any student otherwise qualifying for a loan under this program shall not be disqualified by reason of his being under the age of eighteen years, and for the purpose of applying for, receiving, and repaying the loan, any such person shall be deemed to have full legal capacity to act and shall have all rights, powers, privileges, and obligations of an adult with respect thereto."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for the purpose of section 1 of this Act, as amended by sections 2 and 3 of this Act.

SECTION 5. The sum appropriated shall be expended by the University of Hawaii for the purposes of section 1 of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 11, 1972.)

ACT 35

H. B. NO. 2179-72

A Bill for an Act Relating to the Hawaii Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-1 of the Hawaii Revised Statutes is amended to read:

"Sec. 87-1 Definitions. As used in this chapter:

- (1) 'Board' means the board of trustees as described in section 87-11;
- (2) 'Carrier' means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of health services under group insurance contract or medical, hospital, or dental services agreements;

- (3) 'Contributions' means money payments made to the fund by the State or an employee-beneficiary;
- (4) 'Dependent-beneficiary' means an employee-beneficiary's spouse and any unmarried child, including an adopted child, a stepchild, foster child, or recognized natural child who lives with the employee-beneficiary, deemed eligible by the board to receive health or dental services of a health benefits plan;
- (5) 'Employee' means an employee or officer of the state or county government,
 - (A) Including:
 - (i) A regularly employed member of the faculty of the University of Hawaii, including a research worker, an extension agent, or a person engaged in instructional or administrative work of the University;
 - (ii) A regularly employed administrative officer, principal, vice-principal, teacher, special teacher, cafeteria manager, or cafeteria worker of the public schools;
 - (iii) An apprentice or on-the-job trainee whether or not supported by any federal grant;
 - (iv) An elective officer including a member of the legislature during his term of office, or a person who has served as a member of the legislature for at least a total of ten years;
 - (v) A probationary employee;
 - (vi) A per diem employee;
 - (vii) An officer or employee under an authorized leave of absence; or
 - (viii) An employee of the Hawaii national guard although paid from federal funds;
 - (ix) A retired member of the employees retirement system, the county pension system or the police, firemen, or bandsmen pension system of the State or county;
 - (B) But excluding:
 - (i) A designated beneficiary of a retired member of the employees retirement system, the county pension system or the police, firemen, or bandsmen pension system of the State or county;
 - (ii) A person employed temporarily on a fee or contract basis;
 - (iii) A person hired on a part-time, limited-term, or provisional basis;
 - (iv) A member of a board, commission, or agency appointed by the governor, or mayor or chairman of the State or county, respectively; and
 - (v) An employee of the legislature other than a member of the permanent staff;
- (6) 'Employee-beneficiary' means an employee or the beneficiary of a retired member of the employees retirement system, a county pension system, or a police, firemen, and bandsmen pension system of the

State or county upon the death of the retired member as long as the beneficiary receives a monthly benefit from any such system and, if a child, does not marry, or if a widow, does not remarry; provided that (A) the deceased retired member was enrolled in a family plan at the time of his death, and (B) the beneficiary was covered as a family member under the enrollment of the deceased retired member at the time of his death; and provided further that for the purposes of this subsection, 'family member' means the deceased retired member's spouse and unmarried child under the age of nineteen years including a legally adopted child and a stepchild or recognized natural child who lives with the deceased retired member in a regular parent-child relationship), or unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity which existed prior to his reaching the age of nineteen years; and provided further that the employee or beneficiary of the deceased retired member is deemed eligible by the board to receive health or dental services of a health benefits plan;

- (7) 'Fund' means the trust fund as described in section 87-2;
- (8) 'Health benefits plan' means (A) a group insurance contract on medical, hospital, or dental service agreement in which a carrier agrees to provide, pay for, arrange for or reimburse the cost of health or dental services as determined by the board or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;
- (9) 'Periodic charge' means the periodic payment by the board to a carrier for any health benefits plan; and
- (10) 'Trustee' means a trustee of the board of trustees as described in section 87-11."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 12, 1972.)

ACT 36

H. B. NO. 1749-72

A Bill for an Act Relating to the Employee's Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended to read:

"**Sec. 88-21 Definitions.** The following words and phrases as used in

*Edited accordingly.

this part, unless a different meaning is plainly required by the context, shall have the following meanings:

‘Accumulated contributions’: the sum of all the amounts paid by, or deducted from the compensation of, a member and credited to his individual account in the annuity savings fund together with regular interest thereon.

‘Actuarial equivalent’: a benefit of equal value to the accumulated contributions, annuity, pension or retirement allowance, when computed upon the basis of the actuarial tables in use by the system.

‘Annuity’: benefit payments for life derived from the accumulated contributions of a member.

‘Average final compensation’: the average annual compensation as described in section 88-81, which becomes part of the formula for the computation of a retirement allowance.

‘Beneficiary’: the recipient of any benefit from the system or, as the context may indicate, the natural person or persons designated by a member to receive the benefits payable in the event of his death.

‘County’: the counties of Hawaii, Honolulu, Kauai and Maui, including their respective boards of water supply and other quasi-independent boards, commissions and agencies.

‘Credited service’: prior service plus membership service.

‘Elective officers, elective officials’: elected officers of the State or any county including legislators and county supervisors or councilmen.

‘Employee’: any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, legislative employees who are employed on a full time basis during and between sessions, probationary and provisional employees, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

“(1) per diem employees who elect to withdraw or not to become members as provided in section 88-42;

“(2) members of the legislature who do not elect to be members as provided in section 88-42;

“(3) persons excluded by rules of the board pursuant to section 88-43.

“An individual is an employee during the period of a leave of absence if he is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part.

‘Firemen’: all regularly employed members of the fire departments of the counties, whose principal duties are to prevent and fight fires.

‘Judge’: a justice of the supreme court or a judge of the circuit court of this State.

‘Medical board’: the board of physicians provided for in section 88-31.

‘Medical review board’: a board of physicians appointed to review appeals from the decisions of the medical board.

'Member': any person included in the membership of the system.

'Membership service': all service rendered by a member for which he had made the required contributions to the system.

'Pensions': benefit payment for life derived from money provided by the State or county, as the case may be.

'Per diem worker': a person employed and compensated on an hourly or daily basis.

'Policemen': all duly commissioned members of the police department of the several counties whose principal duties are law enforcement and who are paid on a monthly salary basis, including without limiting the generality of the foregoing, all police matrons and guards who work under the jurisdiction of such departments.

'Prior service': service rendered by a member to the State, territory or county or predecessor government prior to the establishment of the system or, as specifically provided in this part, prior to the admission of certain groups of classes of employees into the system membership.

'Regular interest': interest at four and one-half per cent a year, compounded annually.

'Retirant': a member who has retired and becomes a beneficiary of the system.

'Retirement allowance': the benefit payable for life to which a member is entitled upon his retirement.

'Service': service as an employee paid by the State or county, and also service during the period of a leave of absence or exchange if the individual is paid by the State or county during the period of the leave of absence or exchange or if the individual is not paid by the State or county during the period of the leave of absence but the individual is engaged in the performance of a governmental function or on an approved leave of absence for professional improvement with or without pay and the individual makes the same contribution to the system as he would have made if he had not been on such leave of absence. Cafeteria managers and cafeteria workers shall be considered as paid by the State, regardless of the source of funds from which they are paid.

'Service retirement': retirement of a member for age or length of service.

'System': the employees' retirement system of the State of Hawaii.

SECTION 2. Notwithstanding any provision of Chapter 88 to the contrary, the Employees' Retirement System is hereby authorized to use the increased interest rate of four and one-half per cent a year, compounded annually in determining the employer's normal and accrued liability contributions for the fiscal year 1971-1972 and to adjust such contribution requirements accordingly. This section shall take effect upon the approval of this Act.

SECTION 3. Subject to the foregoing, this Act shall take effect on July 1, 1972.

(Approved May 15, 1972.)

A Bill for an Act Relating to Disposition of Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-48, Hawaii Revised Statutes, is amended to read:

"Sec. 171-48 Residence lots, requirements. In the disposition of lots for residence purposes:

- (1) No person shall purchase or lease, directly or indirectly through an agent, nominee, third person, or otherwise, any interest in more than one lot.
- (2) No person and no unmarried minor child, whose spouse or parent purchases or leases a lot, shall be eligible to purchase or lease any lot.
- (3) The board shall require the lessee or purchaser to construct, within three years after disposition, a dwelling of such size and value as shall be prescribed by the board and to use the lot and dwelling as his principal domicile; provided that the board may, for good and sufficient cause and to alleviate hardship, extend the building deadline, but for a period not exceeding one year.
- (4) The board shall establish such additional restrictions, requirements or conditions in accordance with the powers granted to it in section 171-6(6).
- (5) No person shall be eligible to purchase or lease any lot by drawing if his gross income including the gross income of his spouse exceeds \$20,000 per year. In determining gross income, the standard income tax exemption for each of his dependents, as determined by the income tax laws of the state, shall be allowed.
- (6) No person shall be qualified to purchase or lease any lot who, or whose spouse, or both of them, owns or is a lessee, under a residential lease for a term exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the lessee), of land suitable for residential use."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-41, Hawaii Revised Statutes, is amended to read:

"Sec. 171-41 Commercial, industrial, and other business uses. Leases for commercial, industrial, and other business uses shall be made only pursuant to a development plan which provides for careful placement of complementary enterprises consistent with county zoning requirements. Where a disposition for any such use is made without advance parcelization, the board shall make adequate provisions for the compatibility of the proposed enterprises with any existing surrounding private developments. The board, wherever possible, shall control the landscaping and architecture of the enterprises and protect the public against the creation of nuisances of smoke, soot, irritating odors and gases, and harmful wastes.

The board may sell public land in fee simple for commercial, industrial, or other business uses with the prior approval of the governor and subject to disapproval by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition; provided the above restrictions shall not apply to any sale of land initially acquired for highway purposes with participating federal funds and which land is later found to be in excess of the need for highway purposes."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

A Bill for an Act Relating to the Regulation of Dealers in Agricultural Farm Produce.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 145-1, Hawaii Revised Statutes, is amended to read:

"Sec. 145-1 Definitions. For the purpose of this chapter, unless otherwise required by the context:

"'Department' means the department of agriculture;

"'Producer' means any person engaged in the business of growing or producing any farm produce in the State and shall include any agricultural cooperative organization composed of producers;

“‘Farm produce,’ or ‘farm product,’ means all agricultural, horticultural, and vegetable produce of the soil; poultry, poultry products, livestock, and livestock products, but shall not include (1) timber or timber products; (2) milk or milk products; (3) sugar cane or sugar cane products; or (4) pineapple or pineapple products, other than fresh pineapple purchased from a producer for resale in its natural state;

“‘Commission merchant’ means any person who receives on consignment or solicits from the producer thereof any farm products for sale on commission on behalf of the producer, or who accepts any farm product in trust from the producer thereof for the purpose of resale, or who sells or offers for sale on commission any farm product, or who in any way handles for the account of or as an agent of the producer thereof any farm product;

“‘Dealer’ means any person who solicits or obtains from the producer thereof title, possession or control of any farm product at a specified unit price for the purpose of resale in its natural state to other than the consumer thereof; provided, however, that no dealer shall obtain title, possession or control of any farm product except by contract of purchase, wherein the quantity and price to be paid by the dealer to the producer are designated in the contract;

“‘Broker’ means any person, other than a commission merchant or dealer, who negotiates the purchase or sale of any farm product; provided, however, that no broker may obtain possession of any farm product involved;

“‘Agent’ means any person who, on behalf of any commission merchant, dealer, broker, processor, or retail merchant receives, contracts for, or solicits any farm products from a producer thereof, or who negotiates the consignment or purchase of any farm product on behalf of any commission merchant, dealer, broker, processor, or retail merchant;

“‘Consignor’ means any person who ships or delivers to any commission merchant, dealer, processor, or retail merchant any farm product for handling, sale, or resale;

“‘Processor’ means any person who contracts for or obtains possession of any farm product from the producer thereof for resale in a processed form, but shall not include hotels, restaurants, or other persons furnishing meals, nor shall it include any person who processes any farm produce solely for sale directly to a consumer;

“‘Processed’ means to can, preserve, freeze, pickle, dry, or otherwise prepare with or without added ingredients;

“‘Retail merchant’ means any person who solicits or obtains from a producer thereof title, possession or control of any farm product at a specified unit price for sale at retail to a consumer. For the purposes of this definition, sales to the United States armed forces, restaurants, hotels, hospitals, or institutions are not retail sales;

“‘Consumer’ means any person purchasing farm products for his own family use or consumption.”

SECTION 2. Section 145-2, Hawaii Revised Statutes, is amended to read:

“**Sec. 145-2 Licenses.** No person shall act as a commission merchant,

dealer, broker, agent, processor, or retail merchant without having obtained a license as prescribed by rules and regulations of the department of agriculture.

"In addition to the general requirements applicable to all classes of applications as prescribed by regulation, the following requirements shall apply to each class of application noted:

"(1) Commission merchants: Each application shall include a schedule of commissions and charges for services, and the designated commissions and charges shall not be changed or varied for the license period except by written contract between the parties. In addition, each application shall be accompanied by the surety bond required by section 145-4.

"(2) Agents: Each application shall include the name and address of each commission merchant, dealer, or broker represented or sought to be represented by the agent, the written indorsement or nomination of the commission merchant, dealer, or broker, and such additional information as the department may consider proper or necessary. The department shall thereupon issue to the applicant a license entitling the applicant to conduct the business described in the application at the place named in the application for a year from the date thereof, or until the same is revoked for cause; provided, that the license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The department may also issue to each agent a card or cards which shall bear the signature of the agent, separate cards being required for each principal. Any agent shall show the card or cards upon the request of any interested person. Any agent who displays a void or expired license card shall be punished as provided in section 145-12.

"Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted thereunder. All indicia of the possession of a license shall be at all times the property of the State and each licensee shall be entitled to the possession thereof only for the duration of the license.

"For filing the application for license, each applicant shall pay a fee as prescribed by the department.

"Should any commission merchant, dealer, broker, or processor refuse, fail, or neglect to apply for the renewal of a pre-existing license within thirty days after the expiration thereof, a penalty of forty per cent shall apply to and be added to the original fee as prescribed by the department, and shall be paid by the applicant before the renewal license may be issued.

"Any person who has applied for and obtained a license within the classification of commission merchant, in the manner and upon payment of the fee set forth, may apply for and secure a license in the other classifications without payment of further fee, and upon further complying with those provisions of this part regulating the licensing of the other particular classification involved. All licenses held by any licensee under this section shall automatically expire on the expiration date for the particular license for which the license fee was paid."

SECTION 3. Section 145-5, Hawaii Revised Statutes, is amended to read:

"Sec. 145-5 Reports of consignment sales. Every commission merchant shall make a written report to the producer for farm produce handled on consignment in behalf of said producer which shall be within such time and in such detail as may be prescribed by the department. Making a false or incorrect report shall constitute a misdemeanor under section 145-12."

SECTION 4. Section 145-6, Hawaii Revised Statutes, is amended to read:

"Sec. 145-6 Remittances. Every commission merchant, dealer, broker, agent, processor, or retail merchant shall make payment in full to the producer within such time as may be prescribed by the department. Payment in full means payment of the price agreed upon by the producer and the commission merchant, dealer, broker, agent, processor, or retail merchant, except that, in the case of consignment transactions, the full amount realized from sales, including collections for damage claims, less the agreed commission and other charges, shall be paid."

SECTION 5. Section 145-7, Hawaii Revised Statutes, is amended to read:

"Sec. 145-7 Credit for loss or dumping. No claim or credit in any payment, accounting, or settlement shall be made or taken against a producer by any commission merchant, dealer, processor, or retail merchant for any damage to, or loss, dumping, or disposal, of any farm produce unless such claim or credit has been agreed to in writing by the producer and the licensee has secured and is in possession of a certificate issued by an agent of the department of agriculture showing that the produce has no commercial value, or a certificate issued by a county or state health officer, or other duly authorized officer, stating that the produce has been destroyed or otherwise disposed of as unfit for human consumption."

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect on January 1, 1973.

(Approved May 15, 1972.)

ACT 40

H. B. NO. 1956-72

A Bill for an Act Relating to the Milk Control Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 157-1, Hawaii Revised Statutes, is amended to read:

"Sec. 157-1 Definitions. "Board" means the board of agriculture, department of agriculture.

*Edited accordingly.

"Commissioner" means the commissioner of the division of milk control.

"Consumer" means any person who purchases milk for consumption.

"Distributor" means any person not producing milk who buys, processes and containerizes milk for sale to consumers, stores, or others. It shall also include a producer-distributor functioning in his capacity as a distributor.

"Division" means the division of milk control created by this chapter.

"Licensee" means a licensed producer, licensed producer-distributor, or licensed distributor.

"Milk" means any product containing milk solids, normally produced or marketed through the channels of the fluid milk trade and includes raw milk, pasteurized milk, cream, buttermilk, flavored milk, recombined or reconstituted milk, filled milk, and sterilized milk. "Milk" shall not include butter, cheese, ice cream, or condensed or evaporated milk contained in hermetically sealed cans.

"Filled milk" is any milk, cream or skim milk, whether fresh or recombined, to which has been added or which has been blended or compounded with any fat or oil other than butterfat so that the resulting product is in imitation or semblance of any form of fresh whole milk or cream.

"Sterilized milk" means an absolutely sterile, preheated product, of natural appearance and flavor, without additives or adulterants, retaining the vitamins and constituents of normal milk and aseptically containerized.

"Milk shed" means any country or portion thereof in the State wherein milk control is established.

"Producer" means any person producing milk or any agricultural cooperative that markets milk for sale to distributors or producer-distributors.

"Producer-distributor" means any person who produces milk, or who produces and buys milk, and processes and containerizes milk for sale to consumers, stores, or others."

SECTION 2. PART IV, Chapter 157, Hawaii Revised Statutes, is amended to read:

"PART IV. ESTABLISHMENT OF A MILK SHED AND THE SETTING OF MINIMUM PRICES AND QUOTAS

"Sec. 157-30 Petition to establish or terminate a milk shed. Upon petition by fifty-five percent of all producers and producer-distributors, or by fifty-five percent of all producers in a prospective milk shed, or upon the board's own motion, the board shall hold a public hearing to establish or terminate a milk shed in a county comprising one island or on one or more islands or a portion of an island comprising a county.

"Sec. 157-31 Petition to establish, revise, or terminate minimum prices and quotas. Upon petition by the producers and producer-distributors who produce fifty-five percent of the milk in a milk shed, or by fifty-five percent of all producers in a milk shed, or upon the board's own motion, the board shall hold a public hearing to establish, revise, or terminate the minimum prices for milk to be paid to producers and producer-distributors or the quotas for the

production of milk in a milk shed or both. For the purposes of this section, each producer-member of an agricultural cooperative shall be counted as a producer, and an agricultural cooperative shall not be counted as a producer or as a producer-distributor.

"Sec. 157-32 Standards to determine minimum prices. (a) As a guide to determining the minimum prices of milk to be paid to producers and producer-distributors, the board shall take into consideration the following items based on the operations of a reasonably efficient producer:

- "(1) The price to producers necessary to assure the production of an adequate supply of wholesome milk for the market.
- "(2) The price necessary to return to the producer his cost of production, plus a fair return on his invested capital, his family labor and his management skills.
- "(3) The costs incurred in obtaining, feeding, managing and maintaining dairy animals at optimum production capacity.
- "(4) The prevailing wages and perquisites of employees.
- "(5) The ordinary fixed charges and operating expenses incident to the ownership, operation and management of the dairy.

"(b) In establishing minimum prices for milk under this chapter, the board shall further consider the effect thereof on the consumer.

"Sec. 157-33 Order fixing minimum price. The board shall establish by order the minimum prices and salvage values for milk to be paid to producers by producer-distributors and distributors. The minimum prices and salvage values within each milk shed may vary according to the classes or classifications established by the board; provided that the minimum prices and salvage values for each such class or classification within a milk shed shall be uniform. The minimum prices and salvage values may vary according to counties. The order may prescribe how producers shall be paid for milk sold by them to distributors and producer-distributors.

"Sec. 157-34 Determination of quotas. (a) To promote a proper balance between supply and demand for milk, the board shall provide that the price to be paid to producers shall be based upon quota assigned each producer by the board, which quota shall be determined as follows: upon petition or chairman's motion as set out in section 157-31, there shall be established an initial quota for each producer and producer-distributor, which shall be the average of the amount of milk that he produced and delivered during the three-year period prior to January 1, 1967; provided that if a producer or producer-distributor had not been in business for such period, the board may also take into account his prior production, contract and his investment; and provided further that in any milk shed established subsequent to January 1, 1971 the board shall establish an initial quota for each producer and producer-distributor which shall be the average of the amount of milk that he produced and delivered during the twelve-month period immediately prior to the date of petition or chairman's motion, and may also take into account prior production, contract and investment factors where any of the producers or producer-distributors shall not have been in business for such twelve-month period. The

board shall set the initial quota of a newly licensed producer or producer-distributor entering the market by taking into account all relevant market conditions and the capabilities of the licensee. The board may adjust the initial quotas on a pro rata basis to meet changes in market requirements.

“(b) For each milk shed in which quota control or price control or both is to be established, producers or producer-distributors whose dairies are located outside such milk shed shall participate in said quota control or price control, or both, for milk regularly supplied within the affected milk shed. However, in setting the minimum price for the milk the board shall consider only those costs incurred by producers located within the affected milk shed. Any milk delivered and utilized in a milk shed shall be subject to all the provisions and regulations applicable to that milk shed.

“(c) When the amount of milk resold for human consumption as fluid milk does not exceed the sum of the quotas to be regularly supplied a distributor or producer-distributor, such fluid consumption milk shall be deemed taken ratably from the quotas actually supplied, and payment shall be made accordingly. The board shall determine which producers, not under written contract with a distributor or producer-distributor, are regular suppliers of milk. The remaining milk not used for human fluid consumption shall be paid for according to its use. However, when the producer-distributor or distributor resells milk, other than recombined or reconstituted milk, for fluid consumption in an amount in excess of all quotas assigned producers or producer-distributors regularly supplying him milk, then the fluid consumption prices shall appear pro rata to surplus milk, in the ratio that a producer's quota bears to the sum of the quotas. However, whenever there is quota milk available for purchase within the milk shed, surplus milk may not be used as milk to be resold for human consumption as fluid milk,

“(d) From time to time the board may alter, revise, or adjust the quotas in any milk shed when required to meet changes in conditions, such as change in demand or inability of certain producers or producer-distributors to meet their assigned quotas.

“(e) The board may promulgate rules and regulations governing the transfer of quotas.

“(f) No producer or producer-distributor shall have a quota exceeding twenty percent of the total quotas established in the State. When quotas are established for a milk shed in the State, no producer or producer-distributor shall have a quota exceeding twenty percent of the total quota established in such milk shed; provided that any producer or producer-distributor whose quota shall exceed twenty percent in any such milk shed on June 7, 1971 may continue to maintain such quota in such milk shed, but may not thereafter increase its quota percentage in such milk shed or in any other milk shed. The board may, however, waive the requirements of this subsection within any milk shed when it finds that such action is necessary to insure the availability of an adequate supply of milk to the consuming public within such milk shed to promote stability of the dairy industry in said milk shed and will further be in the public interest. For the purpose of this section, an agricultural cooperative shall not be counted as a producer.”

"Sec. 157-35 Compensatory payment. Whenever any distributor or producer-distributor sells recombined or reconstituted milk for fluid human consumption in a milk shed, the distributor or producer-distributor shall pay the board a compensatory payment to be distributed to all producers who supply milk to the distributor or producer-distributor.

"In determining the compensatory payment, the board shall hold a public hearing whenever it deems it necessary to establish the loss of quota suffered by the producers from the sale of recombined or reconstituted milk, the reasonable rate of return the producers would have received if recombined or reconstituted milk were not sold to the public, and the pro rata share each producer should receive from the compensatory fund. The board may, at the request of a distributor or producer-distributor or on its own motion, suspend the operation of this section during periods when the production of milk by producers is inadequate to meet consumer requirements."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

ACT 41

H. B. NO. 1988-72

A Bill for an Act Relating to the Establishment of A Marketing Order Revolving Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 147, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 147- Marketing order revolving fund. There is established a revolving fund for use by the department of agriculture in providing inspection services for state and federal marketing order programs. Moneys in the fund may be expended for materials, salaries, equipment, training and other costs related to providing inspection services. Moneys derived from the inspection services provided shall be deposited in the fund."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Workmen's Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-31, Hawaii Revised Statutes, is amended to read:

"Sec. 386-31. Total disability. (a) Permanent total disability. Where a work injury causes permanent total disability the employer shall pay the injured employee a weekly benefit equal to sixty-six and two-thirds per cent of his average weekly wages, but no more than \$112.50 nor less than \$18 a week.

In the case of the following injuries, the disability caused thereby shall be deemed permanent and total:

- (1) The permanent and total loss of sight in both eyes;
- (2) The loss of both feet at or before the ankle;
- (3) The loss of both hands at or above the wrist;
- (4) The loss of one hand and one foot;
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;
- (6) An injury to the skull resulting in incurable imbecility or insanity.

In all other cases the permanency and totality of the disability shall be determined on the facts. No adjudication of permanent total disability shall be made until after two weeks from the date of the injury.

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability but not including the first two days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than \$112.50 nor less than \$18 a week, or, if his average weekly wages are less than \$18 a week, at the rate of one hundred per cent of his average weekly wages. In case the total disability exceeds seven days, the compensation shall be allowed from the date of disability.

Temporary total disability benefits shall be paid promptly as it accrues and directly to the person entitled thereto without waiting for a decision from the director, unless the right to the benefits is controverted by the employer. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

SECTION 2. Section 386-32, Hawaii Revised Statutes, is amended to read:

"Sec. 386-32. Partial disability. (a) Permanent partial disability. Where a work injury causes permanent partial disability the employer shall pay the injured worker a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than \$112.50 nor less than \$35 a week, for the period named in the schedule as follows:

Thumb. For the loss of thumb, seventy-five weeks;

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks;

Second finger. For the loss of a second finger, commonly called the middle finger, thirty weeks;

Third finger. For the loss of a third finger, commonly called the ring finger, twenty-five weeks;

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

Phalanx of thumb or finger. Loss of the first phalanx of the thumb shall be equal to the loss of three-fourths of the thumb, and compensation shall be three-fourths of the amount above specified for the loss of the thumb. The loss of the first phalanx of any finger shall be equal to the loss of one-half of the finger, and compensation shall be one-half of the amount above specified for loss of the finger. The loss of more than one phalanx of the thumb or any finger shall be considered as loss of the entire thumb or finger;

Great toe. For the loss of a great toe, thirty-eight weeks;

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks;

Phalanx of toe. Loss of the first phalanx of any toe shall be equal to the loss of one-half of the toe; and the compensation shall be one-half of the amount specified for the loss of the toe. The loss of more than one phalanx of any toe shall be considered as the loss of the entire toe;

Hand. For the loss of hand, two hundred and forty-four weeks;

Arm. For the loss of an arm, three hundred and twelve weeks;

Foot. For the loss of a foot, two hundred and five weeks;

Leg. For the loss of a leg, two hundred and eighty-eight weeks;

Eye. For the loss of an eye by enucleation, one hundred and sixty weeks. For the loss of vision in an eye, one hundred and forty weeks. Loss of binocular vision or of eighty per cent of the vision of an eye shall be considered loss of vision of the eye;

Ear. For the permanent and complete loss of hearing in both ears, two hundred weeks. For the permanent and complete loss of hearing in one ear, fifty-two weeks. For the loss of both ears, eighty weeks. For the loss of one ear, forty weeks;

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, thumb, finger, toe or phalanx shall be equal to and compensated as the loss of a hand, arm, foot, leg, thumb, finger, toe, or phalanx;

Partial loss or loss of use of member named in schedule. Where a work injury causes permanent partial disability resulting from partial loss of use of a member named in this schedule, and where such disability is not otherwise compensated in this schedule, compensation shall be paid for a period which stands in the same proportion to the period specified for the total loss or loss of use of such member as the partial loss or loss of use of that member stands to the total loss or loss of use thereof;

More than one finger or toe of the same hand or foot. In cases of permanent partial disability resulting from simultaneous injury to the thumb and one

or more fingers of one hand, or to two or more fingers of one hand, or to the great toe and one or more toes other than the great toe of one foot, or to two or more toes other than the great toe of one foot, the disability may be rated as a partial loss or loss of use of the hand or the foot and the period of benefit payments shall be measured accordingly. In no case shall the compensation for loss or loss of use of more than one finger or toe of the same hand or foot exceed the amount provided in this schedule for the loss of a hand or foot;

Amputation. Amputation between the elbow and the wrist shall be rated as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be rated as the equivalent of the loss of a foot. Amputation at or above the elbow shall be rated as the loss of an arm. Amputation at or above the knee shall be rated as the loss of a leg;

Disfigurement. In cases of personal injury resulting in disfigurement the director of labor and industrial relations may, in his discretion, award such compensation as he deems proper and equitable in view of the disfigurement but not to exceed \$15,000. Disfigurement is separate from other permanent partial disability and includes scarring and other disfiguring consequences caused by medical, surgical, and hospital treatment of the employee;

Other cases. In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period which bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of total loss or impairment of physical or mental function of the whole man the maximum compensation shall be computed on the basis of the corresponding percentage of \$35,100;

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury.

(b) **Temporary partial disability.** Where a work injury causes partial disability, not determined to be permanent, which diminishes the employee's capacity for work, the employer, beginning with the first day of the disability and during the continuance thereof, shall pay the injured employee weekly benefits equal to sixty-six and two-thirds per cent of the difference between his average weekly wages before the injury and the weekly wages he is capable of earning thereafter, but not more than \$50 a week.

(c) **Provisions common to permanent and temporary partial disability.** No determination of partial disability shall be made until two weeks from the date of the injury.

SECTION 3. Section 386-34, Hawaii Revised Statutes, is amended to read:

"Sec. 386-34. Payment after death. Where an employee is entitled to weekly income and indemnity benefits for permanent total or permanent par-

tial disability and dies from any cause other than the compensable work injury, payment of any unpaid balance of the benefits to the extent that the employer is liable therefor shall be made to his dependents as provided herein. If, at the time of the death, the employee is entitled to any benefits from the special compensation fund, the benefits shall also be paid to his dependents as provided herein.

- (1) To a dependent widow or widower, for the use of the widow or widower and the dependent children, if any. The director of labor and industrial relations may from time to time apportion such compensation among the widow or widower and any dependent children.
- (2) If there be no dependent widow or widower, but one or more dependent children, then to such child or children to be divided equally among them if more than one.
- (3) If there be no dependent widow, widower, or child, but there be a dependent parent, then to such parent, or if both parents be dependent, to both of them, to be divided equally between them; or if there be no such parents, but a dependent grandparent, then to such grandparent, or if more than one, then to all of them to be divided equally among them.
- (4) If there be no dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, then to such dependent, or if more than one, then to all of them to be divided equally among them.
- (5) If there be no such dependents, the unpaid balance of the compensation shall be paid in a lump sum into the special compensation fund."

SECTION 4. Section 386-41, Hawaii Revised Statutes, is amended to read:

"Sec. 386-41. Entitlement to and rate of compensation. (a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral expenses not to exceed \$1,000 to the mortician and burial expenses not to exceed \$500 to the cemetery selected by the family or next of kin of the deceased or in the absence of such family or next of kin, by the employer. Such payments shall be made directly to the mortician and cemetery.

(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased's dependents at the percentages of the deceased's average weekly wages specified below, taking into account not more than \$168.75 and not less than \$30 per week;

To the dependent widow or widower, if there be no dependent children, fifty per cent.

To the dependent widow or widower, if there be one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children, and the director of labor and industrial relations may from time to time apportion the compensation between them in such way as he deems best.

If there be no dependent widow or widower, but a dependent child, then

to the child forty per cent, and if there be more than one dependent child, then to the children in equal parts sixty-six and two-thirds per cent.

If there be no dependent widow, widower, or child, but there be a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents be dependent, then one-half of the foregoing compensation to each of them; if there be no dependent parent, but one or more dependent grandparents, then to each of them the same compensation as to a parent.

If there be no dependent widow, widower, child, parent or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents thirty-five per cent for one dependent, increased by fifteen percent for each additional dependent, to be divided equally among the dependents if more than one.

(c) Maximum weekly amounts. The sum of all weekly benefits payable to the dependents of the deceased employee shall not exceed sixty-six and two-thirds per cent of his average weekly wages, computed by observing the limits specified in subsection (b). If necessary, the individual benefits shall be proportionally reduced.

(d) Liability to special compensation fund in the absence of dependents. If there be no dependents who are entitled to benefits under this section, the employer shall pay the sum of \$8,775.00 for any one death into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the sum of \$8,775.00."

SECTION 5. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately numbered and to read:

"Sec. 386-154.5 Special assessments. (a) For the calendar year 1972 only, insurers of employers as defined in section 386-121(a) (1) shall pay a special assessment of one and one-quarter per cent on gross premiums as defined in section 431-318(a) and in accordance with the provisions of section 386-153.

(b) For the calendar year 1972 only, employers not insured under section 386-121(a) (1) shall pay a special assessment equal to 1.67 times the special charge as defined and in accordance with the provisions of section 386-154.

(c) The assessments under this section shall be paid within 30 days from the receipt of notification by the department of regulatory agencies."

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the Revisor of Statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Licensing of Nurses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 457-7, Hawaii Revised Statutes, is amended to read:

"Sec. 457-7 Registered nurses; qualifications; licenses; fees; title; existing licensed nurses. (a) An applicant for a license to practice nursing as a registered nurse shall submit to the board written evidence, verified by oath or affirmation, that the applicant:

(1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and

(2) Has completed the required state accredited nursing education program.

(b) Licenses shall be granted either:

(1) By examination: The applicant shall be required to pass a written examination in such subjects as the board may determine. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered nurse; or

(2) By endorsement: The board may issue a license to practice nursing as a registered nurse by endorsement to an applicant who has been licensed as a registered nurse under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this State at the time of graduation.

(c) The applicant applying for a license to practice as a registered nurse shall pay a fee of \$20 to the board and a fee of \$5 for each reexamination.

(d) Any person who holds a license to practice nursing as a registered nurse in this State shall have the right to use the title 'Registered Nurse' and the abbreviation 'R.N.' No other person shall assume such title or use such abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a registered nurse.

(e) Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which is valid on June 12, 1970 shall be deemed to be licensed as a registered nurse under this chapter.

(f) Any person who requests to take the licensing examination to qualify for a license in a sister state shall pay a proctoring fee of \$10 to the board."

SECTION 2. Section 457-8, Hawaii Revised Statutes, is amended to read:

"Sec. 457-8 Licensed practical nurse; qualifications; license; fees; title; existing licensed nurses. (a) An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, verified by oath or affirmation, that the applicant:

(1) Has completed an approved high school course of study or the equiv-

- alent thereof as determined by the appropriate educational agency.
- (2) Has completed a prescribed curriculum in a state-accredited program to prepare for a licensed practical nurse and holds a diploma or certificate therefrom.
- (b) Licenses shall be granted either:
- (1) By examination: The applicant shall be required to pass a written examination in such subjects as the board may determine. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a licensed practical nurse; or
- (2) By endorsement: The board may issue a license to practice nursing as a licensed practical nurse by endorsement to any applicant who has been licensed as a licensed practical nurse, or a person entitled to perform similar services under a different title, under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for licensed practical nurses in this State at the time of graduation.
- (c) The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of \$10 to the board and a fee of \$3 for each reexamination.
- (d) Any person who holds a license to practice nursing as a licensed practical nurse in this State shall have the right to use the title 'Licensed Practical Nurse' and the abbreviation 'L.P.N.'. No other person shall assume such title or use such abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a licensed practical nurse.
- (e) Any person holding a license to practice nursing as a licensed practical nurse issued by the board which is valid on June 12, 1970 shall be deemed to be licensed as a licensed practical nurse under this chapter.
- (f) Any person who requests to take the licensing examination to qualify for a license in a sister state shall pay a proctoring fee of \$10 to the board."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

ACT 44

S. B. NO. 1729-72

A Bill for an Act Relating to Counsel and Other Services for Indigent Criminal Defendants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 705C, Hawaii Revised Statutes, is amended in the

*Edited accordingly.

following particulars:

(a) By amending section 705C-1 to read:

"Sec. 705C-1 Right to representation by public defender. Subject to court approval any indigent person (1) arrested for, charged with or convicted of an offense or offenses punishable by imprisonment for 30 days or more; (2) arrested for or charged with a law or ordinance violation and who may be or is subject to the provisions of chapter 571, Hawaii Revised Statutes; (3) whose probation or parole may be revoked; or (4) whose liberty is threatened by confinement, against his will, in any psychiatric or other mental institution or facility, shall be entitled to be represented by a public defender."

(b) By amending section 705C-3 to read:

"Sec. 705C-3 Request for appointment of counsel. Any person entitled to representation by a public defender or other appointed counsel may at any reasonable time request any judge to appoint counsel to represent him."

(c) By amending section 705C-4 to read:

"Sec. 705C-4 Determination of indigency. Unless otherwise ordered by the court, the determination of indigency shall be made by a public defender, subject to review by the court. Such determination shall be based upon an appropriate inquiry into the financial circumstances of the person seeking legal representation and an affidavit or a certificate signed by such person demonstrating his financial inability to obtain legal counsel. A person shall waive his right to counsel by refusing to furnish any information pertinent to the determination of indigency."

(d) By amending section 705C-7 to read:

"Sec. 705C-7 Services other than counsel. Counsel, whether or not appointed by the court, for a defendant, who is financially unable to obtain investigatory, expert, or other services necessary for an adequate defense, may make a request for such services in an ex parte application. After appropriate inquiry in an ex parte proceeding, upon the findings of the judge that services are necessary and that the defendant is financially unable to obtain them, the judge shall authorize counsel to obtain the services on behalf of the defendant and the judge may establish a reasonable limitation for the sums of money to be expended. The judge shall determine reasonable compensation for the services so rendered, based on a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and to prove the reasonableness of the charges a claimant may show the compensation received from others for similar services."

(e) By amending section 705C-12 to read:

"Sec. 705C-12 Organization of office; assistance. Subject to the approval of the defender council, the state public defender may employ assistant state public defenders and such other employees, including investigators, as may be necessary to discharge the function of the office. The assistant public defenders shall be qualified to practice before the supreme court of this State. They shall be appointed without regard to chapters 76 and 77, and shall serve at the pleasure of the state public defender. An assistant State public de-

fender may be employed on a part-time basis and when so employed, he may engage in the general practice of law, other than in the practice of criminal law."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 15, 1972.)

ACT 45

S. B. NO. 1806-72

A Bill for an Act Relating to the Development of a Quality Growth Policy for The State of Hawaii and to Provide for the Implementation thereof.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to provide for the development of a policy for the State of Hawaii to halt urban sprawl with its attendant need for costly urban services, to preserve and conserve open space areas, to enhance and protect the environment of Hawaii, and to uplift the quality of life for all its citizens and to provide for implementation of such policy.

SECTION 2. **Quality growth policy.** The office of the governor shall develop a quality growth policy for the State of Hawaii to effectuate the purpose of this Act based upon criteria which shall include the following considerations:

- (a) an examination of the environmental impact of proposed urban development;
- (b) the relationship between short-term and long-term environmental quality;
- (c) any irretrievable commitment of resources through urban development; and
- (d) alternatives available to minimize adverse environmental effects as balanced against economic development of the State.

The quality growth policy shall include a comprehensive policy framework for directing growth and land use and shall identify state growth objectives and specific operational constraints to further such objectives.

SECTION 3. **Effective date.** This Act shall take effect upon its approval.

(Approved May 15, 1972.)

*Edited accordingly.

ACT 46

H. B. NO. 371

A Bill for an Act Relating to the Civil Defense and Emergency Act.

Be It Enacted by the Legislature of the State Of Hawaii:

SECTION 1. Section 128-27, Hawaii Revised Statutes, is amended to read:

"Sec. 128-27. Rules, regulations, and orders. For the purpose of carrying out any provision of this chapter, the governor may prescribe rules and regulations, which may, if so stated in the rules or regulations, have the force and effect of law. Even though the rules and regulations are prescribed pursuant to a power conferred, or having mandatory or prohibitive effect, only in the event of a civil defense emergency period, the rules and regulations nevertheless may be prescribed prior thereto if stated therein to have the force and effect of law only in the event of a civil defense emergency period. All the rules and regulations, and likewise all other action taken under this chapter, shall be made and taken with due consideration of the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto. In these rules and regulations reasonable classifications, exceptions, and exemptions may be made and granted. Chapter 91 shall not apply to such rules and regulations.

The power to prescribe rules and regulations having the force and effect of law shall not be deemed in derogation of the power of the governor, or his duly authorized representatives, to make orders for the enforcement of this chapter or the rules and regulations issued thereunder. The rules and regulations may provide for the making of administrative findings by duly authorized representatives, or for the application of the rules or regulations by such representatives as the circumstances may require, and the issuance of orders therefor.

Rules and regulations prescribed pursuant to this chapter shall be promulgated as herein provided, and may be made effective upon the promulgation. The rules and regulations shall be promulgated by publishing the same in a newspaper of general circulation in the State, or, where only known persons are concerned, the same may be promulgated by service upon these persons by registered mail, or by personal service; provided that when immediate promulgation of the rules or regulations is necessary in the opinion of the governor, who shall be the sole judge thereof, in lieu of publication, the same may be promulgated by radio broadcast or such other means as may be available; provided, further that the rules or regulations shall be published thereafter, as hereinbefore provided at the earliest practicable date."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Additional Unemployment Compensation Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 385-1, Hawaii Revised Statutes, is amended to read:

"Section 385-1. Additional unemployment compensation benefits; payable when. The additional unemployment benefits provided for in this chapter shall be authorized when a disaster, either natural or manmade has struck the State, or any county thereof causing damage to a substantial number of persons and families so as to require assistance from the State, and an unemployable problem has been created thereby.

Upon the occurrence of said disaster, the governor may provide additional unemployment benefits in the appropriate county or counties as provided for in this chapter. The additional benefits shall be operative upon the issuance by the governor of a proclamation specifically invoking this chapter and identifying the county or counties which have been affected and in which provision for additional unemployment benefits shall be made operative."

Section 2. Section 385-4, Hawaii Revised Statutes, is amended to read:

"Section 385-4. Weekly benefit amount. A claimant's weekly benefit amount under this chapter shall be the same as his weekly normal benefit amount payable during his current benefit year if he has an unexpired benefit year, or his most recent benefit year less that part of wages (if any) payable to him with respect to such week which is in excess of \$2; provided that if the claimant was self-employed during the week in which the disaster identified by the governor in the proclamation provided for in section 385-1 occurred, or he was employed during such week but his total earned wages are insufficient to entitle him to normal benefits, then his weekly benefit amount shall be the average weekly benefit payable at that time less that part of wages (if any) payable to him with respect to such week which is in excess of \$2."

SECTION 3. Section 385-6, Hawaii Revised Statutes, is amended to read:

"Section 385-6. Requirements for eligibility. An unemployed claimant is eligible to receive additional unemployment benefits with respect to any week only if the director of labor and industrial relations finds that:

- (1) He has made a claim for additional unemployment benefits with respect to such week in accordance with the regulations as the director may prescribe with respect to claims for normal benefits;
- (2) He meets the eligibility requirements of paragraphs (2) and (3) of section 383-29, or chapter 384;
- (3) He is not subject to disqualification and is not under disqualification for normal benefits under section 383-30;

- (4) He is not entitled to receive unemployment compensation benefits under any state or federal unemployment compensation laws for the week in which he claims for additional unemployment benefits.
- (5) He is not entitled to receive disaster benefits under any state or federal law for the week in which he claims additional unemployment benefits."

SECTION 4. Section 385-7, Hawaii Revised Statutes, is amended to read:

"Section 385-7. Disqualification for additional unemployment benefits.

A claimant shall be disqualified for additional unemployment benefits:

- (1) Voluntary separation. For any week in which he has left his work voluntarily without good cause and for not more than seven consecutive weeks of unemployment which immediately follows such week, as determined according to the circumstances in each case.
- (2) Discharge for misconduct. For the week in which he has been discharged for misconduct connected with his work and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct.
- (3) Failure to apply for work, etc. If he has failed, without good cause, either to apply for available, suitable work when so directed by the director of labor and industrial relations or any duly authorized representative of the director, or to accept suitable work when offered him. The disqualification shall continue for the week in which such failure occurred and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined according to the circumstances of each case.
- (A) In determining whether or not any work is suitable for a claimant there shall be considered among other factors and in addition to those enumerated in subparagraph (B) of this paragraph, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, and the distance of available work from his residence and prospects for obtaining local work.
- (B) No work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible claimant for refusing to accept new work under any of the following conditions:
 - (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - (ii) If the wages, hours, or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality;
 - (iii) If as a condition of being employed the claimant would

be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

- (4) Labor dispute. For any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishments, or other premises at which he is or was last employed; provided that this paragraph shall not apply if it is shown that:
 - (A) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
 - (B) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute;

provided that, if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this paragraph be deemed to be a separate factory, establishment, or other premises.

- (5) Fraud. If the director finds that he has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain any additional unemployment benefits under this chapter, in which case he shall be disqualified for the week in which the director makes such determination and for the remainder of the weeks for which he would otherwise be eligible.
- (6) Pregnancy. Within four months prior to the anticipated date of such claimant's giving birth to a child and two months after childbirth."

SECTION 5. Section 385-11(a), Hawaii Revised Statutes, is amended to read:

"(a) Any person who makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false or who knowingly fails, or causes another to fail, to disclose a material fact, and as a result thereof has received any amount as benefits under this chapter to which he was not entitled shall be liable for such amount. Notice of redetermination in such cases shall specify that the person is liable to repay to the fund the amount of additional unemployment benefits paid to him by reason of such nondisclosure or misrepresentation, and the week or weeks for which the benefits were paid."

SECTION 6. Section 385-15, Hawaii Revised Statutes, is amended to read:

"Section 385-15. Nonliability of State. Additional unemployment benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter, subject to amendment or repeal thereof, and to the extent that moneys are available therefor to the credit of the additional unemployment compensation fund."

SECTION 7. Section 385-16, Hawaii Revised Statutes, is amended to read:

"Section 385-16. Period of benefit payments; issuance of further proclamations. Where the additional benefits provided by this chapter are made payable by the governor's proclamation after the occurrence of a disaster, the benefits shall be payable only for a period of one year after the effective date of the proclamation.

Nothing herein shall prevent the governor from issuing further proclamations invoking this chapter in the event other disasters occur."

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 48

H. B. NO. 867

A Bill for an Act Prohibiting the Use of Motor Vehicles as a Domicile or Residence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose and findings.** The legislature finds that the use of motor vehicles as a domicile or residence constitutes a hazard to the public health and welfare. The purpose of this act is to protect the public health and welfare by prohibiting the use of any motor vehicle for purposes of human habitation unless authorized by law, applicable department rules and regulations, or under emergency conditions in the interest of vehicular safety.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding to part XI new sections to be designated and to read as follows:

"Sec. 291C-112 Certain uses of parked vehicles prohibited between 6:00 p.m. and 6:00 a.m.; definition; exceptions. (a) No person shall use any vehicle for purposes of human habitation, whether or not the vehicle is designed or equipped for that purpose, while the vehicle is parked on any roadway, street, or highway or other public property between the hours of 6:00 p.m. and 6:00 a.m. or while the vehicle is parked on private property without authorization of the owner or occupant authorizing both the parking of the vehicle there and its use for purposes of human habitation.

(b) As used in this section "purposes of human habitation" includes use as a dwelling place, living abode, or sleeping place.

(c) This section does not apply to the parking of vehicles and their use for purposes of human habitation in parks, camps, and other recreational areas in compliance with law and applicable rules and regulations, or under emergency conditions in the interest of vehicular safety.

*Edited accordingly.

(d) The department of health shall promulgate rules and regulations, pursuant to chapter 91, necessary for the administration of this section.

Sec. 291C-113 Ordinances regulating use of vehicles for purposes of human habitation. Each of the counties may enact and enforce ordinances regulating the use of vehicles for purposes of human habitation.

Upon each of the counties enacting an ordinance pertaining to the use of vehicles for purposes of human habitation, then so far as that county is concerned, the ordinance shall have full force and effect, and shall supersede section 291C-112 until the ordinance is repealed or otherwise made invalid."

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 49

H. B. NO. 2222-72

A Bill for an Act Relating to Birds and Mammals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and declaration of necessity. In the past 150 years, twenty-three out of sixty-eight bird species that occur naturally only in Hawaii have become extinct and twenty-nine of those that remain are considered threatened with extinction, primarily because of increased human use of the land and disturbances to native ecosystems.

These indigenous species of birds and mammals are an integral part of Hawaii's native ecosystems and are part of the living heritage of old Hawaii for they represent a natural resource of scientific, cultural, educational, environmental and economic value to future generations of Hawaii's people.

To insure the continued perpetuation of indigenous birds and mammals and their habitats for human enjoyment, for scientific purposes, and as members of ecosystems, it is necessary that the State take positive actions to enhance their prospects for survival.

SECTION 2. Chapter 191, Hawaii Revised Statutes, is hereby amended by adding a new part to be appropriately numbered and to read as follows:

"PART BIRD AND MAMMAL CONSERVATION PROGRAM

Sec. 191-1 Definitions. As used in this Act:

'Department' means the department of land and natural resources.

'Endangered species' includes any bird or mammal species whose population levels are being depleted or is subject to extinction because of increased human use of the land or disturbance to native ecosystems or as otherwise provided in sec. 191- 3.

'Indigenous' refers to all bird and mammal life growing or living naturally in Hawaii without having been brought here by man.

'Management' refers to the development, regulation, enforcement, con-

trol and other practices used to maintain or enhance indigenous bird or mammal populations.

Sec. 191- 2 Protection and list of indigenous birds and mammals. The department shall formulate programs for the conservation, management, and protection of indigenous birds and mammals. It shall, through the division of fish and game, conduct investigations of such species and their associated ecosystems in order to develop information relating to estimates of population, habitat, range and other biological data necessary to determine the status of indigenous birds and mammals. On the basis of such data, the department shall compile a list of all indigenous birds and mammals, giving their common, Hawaiian, and scientific names, range and distribution. The compilation shall be kept current based on all available scientific data. It shall be unlawful to take, possess, transport, export, process, sell, or offer for sale any bird or mammal on the list of indigenous species except as provided by rules and regulations promulgated by the department.

Sec.191- 3 Endangered species. An indigenous bird or mammal species shall be regarded as endangered whenever the department, pursuant to chapter 91, determines that such bird or mammal is threatened with extinction, or will likely within the foreseeable future be threatened with extinction, throughout the State or on any island or islands within the State, based on the results of investigations by the division of fish and game and other scientific data, and after consultation with other competent authorities, appropriate federal agencies, and other interested persons and organizations. Any indigenous bird or mammal shall be considered as endangered upon findings by the department that the following conditions exist:

- (1) the destruction, modification, or curtailment of its habitat or native ecosystem;
- (2) its overutilization or overexploitation;
- (3) the effect on it of disease or predation;
- (4) the inadequacy of existing regulatory mechanisms;
- (5) other natural or man-made factors affecting its continued existence and its survival requires assistance.

Sec. 191- 4 List of endangered birds and mammals. The department shall compile and keep current, a list of those species of indigenous birds and mammals that are determined to be endangered species. The compilation shall include their common, Hawaiian, and scientific names; distribution by area, island or islands where the species is endangered; and altitude of range, if appropriate. The bird and mammal species indigenous to Hawaii that are contained in the United States' List of Endangered Native Fish and Wildlife as it appears on the effective date of this Act (Part 17 of Title 50 of the Code of Federal Regulations, Appendix D) shall be adopted and incorporated by reference into the list of endangered species of birds and mammals indigenous to Hawaii.

Sec. 191- 5 Amendment of endangered list. The department shall, pursuant to chapter 91, upon its own recommendation or upon the petition of three interested persons, conduct a departmental review of any bird or mammal

species proposed to be added or removed from the endangered list. The department shall conduct a review of the endangered list from time to time for the purpose of submitting a biennial report to the governor on the endangered list of birds and mammals and any amendments which have been made to the list during the interim period.

Sec. 191- 6 Programs for indigenous birds and mammals and endangered species. (a) The department shall conduct research on indigenous birds and mammals and on endangered species and their associated ecosystems, and shall utilize the land acquisition and other authority vested in the department to carry out programs for the conservation, management, and protection of such species and their associated ecosystems. In addition, the department is hereby authorized to acquire by purchase, donation or otherwise, lands or interests therein needed to carry out the programs relating to the intent and purpose of this Act.

(b) The office of the governor shall review other programs administered by the department and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor or his authorized representative shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section by carrying out programs for the protection of endangered species and by taking such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

(c) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies and with the counties for administration and management of any area established under this section or utilized for conserving, managing, enhancing, or protecting indigenous birds and mammals and endangered species.

(d) In carrying out programs authorized by this section, priority shall be given to the conservation and protection of those endangered bird and mammal species and their associated ecosystems whose extinction within the State would imperil or terminate, respectively, their existence in the world.

(e) The department shall coordinate with the natural area reserves commission and the animal species advisory commission all research, investigations, lists of indigenous and endangered birds and mammals, and programs for the conservation, management, enhancement and protection of such species that are authorized by this Act.

(f) The department may permit, under such terms and conditions as are adopted by regulation, the taking, possession, transportation or exportation of any indigenous bird or mammal on the endangered list for zoological, educational, or scientific purposes and for propagation of such species in captivity for preservation purposes.

Sec. 191- 7 Regulations. The department shall adopt rules and regulations, pursuant to chapter 91, necessary for the purposes of this Act.

Sec. 191- 8 Enforcement and penalties. Any person who violates the provisions of this Act, or any regulations issued pursuant thereto or whoever violates the terms of any permit issued thereunder, shall be imprisoned not more than six months or fined not more than \$500, or both."

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 50

H. B. NO. 2279-72

A Bill for an Act Relating to the Kamehameha Day Celebration Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 8-5, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 8-5 Kamehameha Day celebration commission. There shall be a commission to be known as the Kamehameha Day celebration commission which shall consist of twenty-two members to be appointed by the governor in the manner provided by section 26-34, such appointments to be made from the following organizations, with at least one member from each organization:

- (1) The Order of Kamehameha;
- (2) The Kaahumanu Society;
- (3) The Hale o Na Alii o Hawaii;
- (4) The Daughters and Sons of Hawaiian Warriors;
- (5) The Daughters of Hawaii;
- (6) The Kamehameha Schools Alumni Association;
- (7) The Hui Opio;
- (8) The State Association of Hawaiian Civic Clubs;
- (9) The Hawaiian Lei Sellers' Association;
- (10) The Waimanalo Homesteaders' Association;
- (11) The Kapahulu Music Club;
- (12) The Nanakuli Homesteaders' Association;
- (13) The Native Sons and Daughters of Hawaii;
- (14) The Hui Holo Pa-u Me Na Hoa Hololio;
- (15) The Papakolea Homesteaders' Association.

In addition the governor shall appoint one member from each of the following islands: Kauai, Maui, Molokai, Oahu and Hawaii.

The terms of all appointments shall be four years. The governor shall appoint the chairman of the commission from among the members.

The members of the Kamehameha Day celebration commission shall serve without compensation, but shall be entitled to reimbursement for travel and necessary expenses while attending meetings and while in discharge of their duties.

The commission shall have charge of all arrangements for the celebration each year on June 11, generally observed throughout Hawaii Nei as the anniversary of the birth of King Kamehameha I, and recognized as such under section 8-1. The commission may appoint committees from among its member-

ship and delegate such powers and duties to such committees as it shall determine.

However, if any committee is appointed for Hilo, Hawaii, no additional committee shall be appointed for the Hamakua or Kau districts, but celebration activities in those districts shall be in charge of the Hilo committee so appointed.

The commission may accept donations of money and personal property. There is created in the treasury of the State a special fund to be known as the Kamehameha day celebration fund, into which all monies donated or appropriated by the legislature to the commission shall be deposited and from which the expenses of the commission to carry out the purpose of this section shall be paid. The monies appropriated by the legislature to the Kamehameha day celebration fund and not expended within the fiscal year or years shall not lapse but such monies shall be retained in said fund for use by the commission in subsequent years. Disbursement of monies from said fund shall be by state warrants issued in accordance with applicable laws and regulations and based on vouchers signed by the chairman of the commission.

SECTION 2. The sum appropriated to the Kamehameha Day celebration commission by Act 68, Session Laws of 1971 is hereby transferred to the Kamehameha Day celebration fund.

SECTION 3. New material is underscored. In printing this Act the revisor of Statutes need not include the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 51

S. B. NO. 1060

A Bill for an Act Relating to Real Estate Brokers and Salesmen.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended in the following particulars:

a. By amending Section 467-16 to read:

"Sec. 467-16 Real estate recovery fund; use of fund; fees. The real estate commission shall establish and maintain a real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesman, upon the grounds of fraud, misrepresentation or deceit, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$10,000 for damages sustained by the fraud, misrepresentation, or deceit.

*Edited accordingly.

Every real estate broker, when renewing his license in 1968 and 1969, shall pay in addition to his license renewal fee, a fee of \$25 for deposit in the real estate recovery fund. Every real estate salesman, when renewing his license in 1968 and 1969, shall pay, in addition to his license renewal fee, a fee of \$15 for deposit in the real estate recovery fund. On or after January 1, 1968, when any person makes application for an original license to practice as a real estate broker or salesman he shall pay, in addition to his original license fee, a fee of \$25 for deposit in the real estate recovery fund. If the commission does not issue the license, the fee shall be returned to the applicant."

b. By amending Section 467-18 to read:

"Sec. 467-18 Statute of limitation; recovery from fund. (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the aggrieved person shall notify the real estate commission in writing to this effect at the time of the commencement of such action. The commission may intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit or district court where the violation occurred against any real estate broker, or real estate salesman, upon the grounds of fraud, misrepresentation, or deceit, which occurred on or after January 1, 1968, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. For any cause of action occurring prior to January 1, 1968, the aggrieved person must proceed against the existing bond covering the license which was in force prior to the establishment of the real estate recovery fund.

(c) The court shall proceed upon the application in a summary manner, and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) He is not a spouse of debtor, or the personal representative of such spouse.
- (2) He has complied with all the requirements of this section.
- (3) He has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.
- (4) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.
- (5) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and

liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable upon the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No such broker or salesman shall be eligible to receive a new license until he has repaid in full, plus interest at the rate of six percent a year, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(f) If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission, shall, when sufficient money has been deposited in the real estate recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of six percent a year."

c. By amending Section 467-21 to read:

"Sec. 467-21 The real estate commission has standing in court. When the real estate commission receives notice, as provided in Section 467-18(a), the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. The commission or its legal representative shall be served with all pleadings in an action which may result in a recovery from the real estate recovery fund.

Settlement of any claim against the real estate recovery fund may be made only with the unanimous agreement of the commission, director of regulatory agencies, and attorney general that settlement is in the best interest of the real estate recovery fund."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 52

S. B. NO. 1343-72

A Bill for an Act Relating to Payment of Wages and other Compensation and Amending Chapter 388, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding the following sections to part II, to be appropriately designated and to read:

"Sec. 388- Advance notice of termination of employment. If an employer requires an employee to give advance notice of termination and the employee gives such notice, the employer shall be liable for the wages which the employee would have earned during the stated period in such notice starting from the day such notice is given, providing that the employee does not voluntarily terminate the employment or the employment is not terminated for cause prior to the last day of such period.

Sec. 388- Other applicable provisions. Sections 388-1 to 388-13 shall be applicable to this part and the terms 'wages' and 'compensation' used in the sections shall include all compensation payable under this part."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 53

S. B. NO. 1346-72

A Bill for an Act Relating to Manpower Development and Training and Amending Chapter 394, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 394-2, Hawaii Revised Statutes, is amended to read:

"Sec. 394-2 Establishment of programs. (a) There is established within the department of labor and industrial relations manpower development and training programs for the various industries in the State. The training programs are to be developed to assist those unemployed and underemployed persons who cannot reasonably be expected to obtain suitable full-time employ-

*Edited accordingly.

ment without the benefit of training. Instruction and training shall be provided by the department of education and the University of Hawaii system, and/or other suitable agencies. Where a need is indicated to overcome barriers to possible training, the department of labor and industrial relations, either on its own or in cooperation with the various departments and agencies of the state and county governments and private industry, may arrange for transportation, child care, health care and other aids to employment. The department of labor and industrial relations is also authorized to formulate and carry out a program of providing useful public service employment to unemployed persons other than public assistance recipients.

(b) The department of social services and housing is authorized to formulate and carry out a program of providing useful public service employment to public assistance recipients. Refusal to accept suitable work as determined by the department of social services and housing without justifiable reasons shall render an unemployed or underemployed recipient ineligible for public assistance."

SECTION 2. The department of labor and industrial relations may transfer to the department of social services and housing, and the latter may expend, the balance of any appropriation heretofore enacted for the purposes of chapter 394.

SECTION 3. The department of labor and industrial relations may transfer to the department of social services and housing any positions or employees heretofore engaged in administering a program of public service employment under chapter 394. Such employees shall remain civil service employees without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination.

SECTION 4. Section 7 of Act 188, Session Laws of Hawaii 1971, is hereby repealed.

SECTION 5. The department of social services and housing may, with the approval of the governor, expend for the purposes of this Act any appropriations made for the fiscal biennium 1971-1973 for public assistance.

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Workmen's Compensation Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-181, Hawaii Revised Statutes, is amended to read:

"Sec. 386-181 Generally. (a) Definitions. As used in this section, 'public board' means a governmental body, regardless of its designation, duly created under authority vested by law for the purposes of performing quasi-judicial, administrative or advisory functions, 'reserve police officer' means a member of an authorized reserve force of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of said department, 'volunteer fireman' means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of said department, and 'volunteer deputy fish and game warden' means a member of the authorized volunteer enforcement force of the division of fish and game, department of land and natural resources, State of Hawaii, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of said department.

(b) Benefits of injured board members, reserve police officers, volunteer firemen, and volunteer deputy fish and game wardens. If a member of a public board, a reserve police officer, a volunteer fireman, or a volunteer deputy fish and game warden is injured while performing services for the board, county police department, county fire department, or division of fish and game, department of land and natural resources, under the conditions specified in section 386-3, he or his dependents shall be entitled to all compensation in the manner provided by this chapter and for its purpose the member shall, in every case, be deemed to have earned wages for the services.

(c) Computation of average weekly wages. In computing the average weekly wages of an injured public board member, reserve police officer, volunteer fireman, or volunteer deputy fish and game warden:

- (1) his income from self-employment shall be considered wages;
- (2) he shall, in no event, be considered to have earned less than the minimum hourly wage prescribed in chapter 387;
- (3) wages of other employees in comparable employment shall not be considered;
- (4) section 386-51(5) shall not apply; and
- (5) all provisions of section 386-51 not inconsistent herewith shall apply."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

*Edited accordingly.

A Bill For an Act Relating to Qualifications for Dental Licensure.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448-9, Hawaii Revised Statutes, is amended to read:

"Sec. 448-9 Application for examination; fee. Any person of the age of twenty-one years or more, who is a citizen of the United States, and has been a resident of the State for at least one year, and who is of good moral character, shall be eligible to take an examination before the board of dental examiners upon complying with the following requirements:

Applications for examination shall be made out and filed in writing with the secretary of the board and each application shall be accompanied by a fee of \$50 which shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

Each applicant shall file, in writing with the secretary at least forty-five days prior to the date selected by the board for the examination of the following credentials:

- (1) A diploma or certificate of graduation from a dental college accredited by the Council of Dental Education of the American Dental Association, recognized and approved by the board;
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of dental examiners, and the secretary of the state dental association of that state;
- (3) A recent unmounted photograph of the applicant."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

A Bill For an Act Relating to Qualifications for Registration as Engineers, Surveyors and Architects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 464-8, Hawaii Revised Statutes, is amended to read:

"Sec. 464-8 Qualifications for registration. No person shall be eligible

*Edited accordingly.

for registration as a professional, engineer, architect, land surveyor or landscape architect unless:

- (1) He is the holder of an unexpired certificate of registration issued to him by any jurisdiction, domestic or foreign, in which the requirements for registration at the time he was first registered were of a standard satisfactory to the board of registration of professional engineers, architects, and surveyors; provided, this paragraph shall be only applicable to professional engineering, architecture and landscape architecture and provided, that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that he successfully pass a written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession for which registration is desired; or
- (2) He is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering or landscape architectural curriculum of four years or more, or a course in land surveying approved by the board, all as the case may be; and also has had three years of full-time lawful experience in engineering, land surveying or landscape architecture work, as the case may be, of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has also successfully passed a written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession for which registration is desired; or
- (3) He has had twelve years of full-time lawful experience in engineering, land surveying or landscape architecture work as the case may be, of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has also successfully passed a written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession for which registration is desired; or
- (4) (A) He holds a master's degree in architecture from an approved institution of higher education with training and education in the field of architecture adequate to the satisfaction of the board; and has also had one year of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a professional written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession of architecture; or
 (B) He holds a bachelor's degree in architecture from a school or college approved by the board as of satisfactory standing, and has completed an architectural curriculum of five years; and also had two years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a professional written or oral examination, or both, prescribed by the

- board and designed to test his knowledge, skill, and competency in the profession of architecture; or
- (5) He is a graduate of a school or college approved by the board as of satisfactory standing and has completed a pre-architecture or arts and science curriculum of four years or more; and has also had five years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a qualifying written examination and a professional written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession of architecture; or
 - (6) He is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; and has also had eight years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a qualifying written examination and a professional written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession of architecture; or
 - (7) He has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board; and has also successfully passed a qualifying written examination and a professional written or oral examination, or both, prescribed by the board and designed to test his knowledge, skill, and competency in the profession of architecture.

In addition to the foregoing requirements, the board, may, in its discretion, require additional proof that the applicant is competent to practice professionally, and whenever the board is not fully satisfied from the results of an examination that any applicant is competent to practice professionally, it may give him a further examination or examinations.

No person shall be eligible for registration as a professional engineer, architect, land surveyor or landscape architect who is not of good character and reputation."

SECTION 2. This Act shall not apply to persons who submitted applications prior to the effective date of this Act.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

*Edited accordingly.

A Bill for an Act to Establish the Hawaii Occupational Safety and Health Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
OCCUPATIONAL SAFETY AND HEALTH LAW**

“§ -1 **Short title.** This chapter shall be known as the Hawaii Occupational Safety and Health Law.

§ -2 **Findings and purpose.** Through years of research and study, Congress has found that the number of industrial accidents that take place in the United States can be reduced if certain minimum standards are established and enforced.

Congress has also found that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. The overall congressional findings would definitely be applicable to Hawaii. There is a need to assure so far as possible, every working man and woman in the State safe and healthful working conditions. This legislation is also designed to permit and encourage employer and employee efforts to reduce injury and disease arising out of employment, and to stimulate them to institute new programs and to perfect existing programs for providing safe and healthful working conditions.

“§ -3 **Definitions.** When used in this chapter:

‘Department’ means the department of labor and industrial relations.

‘Director’ means the director of labor and industrial relations.

‘Appeals Board’ means the labor and industrial relations appeals board.

‘Employer’ means:

- (1) The State and every state agency;
- (2) Each county and all public and quasi-public corporations and public agencies therein;
- (3) Every person which has any natural person in service;
- (4) The legal representative of any deceased employer;
- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

‘Employee’ means every natural person who is required or directed by any employer to engage in any employment, or to go to work or be at any time in any place of employment for which he is paid compensation.

‘Place of employment’ means any place, and the premises appurtenant

thereto, where employment is carried on, except a place the safety jurisdiction over which is vested by law in any federal agency.

'Employment' includes the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

'Safe' and 'safety' as applied to an employment or place of employment mean such freedom from danger to employees as the nature of the employment reasonably permits.

'Safety device' and 'safeguard' shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

'Manufacturer' means, for the purpose of the section concerning explosives, any person who is engaged in the manufacture of explosives or who otherwise produces any explosive;

'Occupational Safety and Health Standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

'Dealer' means, for the purpose of the section concerning explosives, any person, not a manufacturer, engaged in the business of buying and selling explosives.

§ -4 Powers and duties of department.

(a) Administration. The department shall be responsible for administering occupational safety and health standards throughout the State;

- (1) The department shall prescribe and enforce rules and regulations under chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter.
- (2) Emergency temporary standards may be promulgated without conforming to chapter 91, without hearings or publication by the department by giving three days written notice for compliance for the protection of employees against new hazards unforeseen by this chapter. Said emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;
- (3) Variances from occupational safety and health standards promulgated under this chapter may be granted upon application of an employer or employers. Application for variances must correspond to procedures set forth in the rules and regulations of this chapter. The employer shall also notify his employees upon each application for variance and said employees shall be given an opportunity to request and participate in hearings or other proceedings relating to applications for variance. No inference of admission of violation of a standard shall be made against the employer by reason of his application for variance;

- (4) The department may, upon the application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may petition the department for an extension of time, which may be granted if the department finds it necessary.
- (b) Inspection and investigation.
- (1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;
 - (2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to the life, safety and health of workers;
 - (3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;
 - (4) The department shall inspect, at least semiannually, all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides;
 - (5) The department may investigate the cause of all industrial injuries resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;
 - (6) The department shall have the right to question privately any such employer, owner, operator, agent or employee in investigation, enforcement and inspection activities;
 - (7) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.
- (c) Education and training.
- (1) The department may disseminate through exhibitions, moving pictures, lectures, pamphlets, and any other method of publicity, information to employers, employees and the general public regarding the causes and prevention of industrial accidents and injuries.

- (2) Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of encouraging voluntary compliance.
- (d) Enforcement.
- (1) Whenever right of entry or inspection is refused to an authorized representative of the director, the department may apply to the circuit court of the circuit where such place of employment exists for a search warrant providing on its face that the willful interference with its lawful execution may be punished as a contempt of court.
- (2) Whenever the department finds that any employment or place of employment or the operation of any machine, device, apparatus, or equipment is not safe, or that any practice, means, method, operation, or process employed or used in connection therewith is unsafe or does not afford adequate protection to the life, safety and health of employees in the employment, the department may make an order relative thereto which is necessary to render the employment or place of employment safe and protect the life and safety of employees therein and deliver the same to the employer. The department may in the order direct that, in the manner and within a time specified, such additions, repair, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to render the employment or place of employment safe. The employer shall obey and observe all safety orders and post said orders in a prominent place;
- (3) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used, is in an unsafe condition or is not properly guarded or dangerously placed, the use thereof shall be prohibited by the department, and an order to that effect shall be posted prominently in the working place. The order shall be removed: (A) when a determination has been made by the department that the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety devices are provided for; and (B) by an authorized representative of the department.
- (4) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used constitutes an imminent hazard to the life or safety of any person, the department may apply to the circuit court of the circuit in which such place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed for an injunction restraining the use or operation thereof until the use or operation is made safe.

The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of an order of the department and constitutes an imminent hazard to the life or safety of any employee, and accompanied by a copy of the order applicable thereto, shall warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the department as a prerequisite to the granting of a restraining order.

(5) (A) In addition to any other power and authority of the department under this chapter, the director or his authorized subordinate may arrest any person for violation of this chapter or any rule or regulation promulgated pursuant to this chapter. Upon arresting any person for the violation, the director or his authorized subordinate shall take the name and address of the person and shall issue to him a summons or citation, printed in the form hereinafter described, directing him to appear and answer to the charge against him at a certain place and at a time within seven days after the arrest.

(B) There shall be a form of summons or citation for use in citing violators of this chapter or rules or regulations promulgated thereunder which does not require the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summonses or citations used in modern methods of arrest, and shall be so designed to include all necessary information to make the same valid and legal. The form and content of the summons or citation shall be as adopted or prescribed by the district court.

In every case when a summons or citation is issued the original shall be given to the violator; provided that the district court may prescribe the issuance to the violator of a carbon copy of the summons or citation and provide for the disposition of the original and any other copies.

Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(C) If any person fails to comply with a summons or citation given on him or fails or refuses to deposit bail as required and within the time permitted, the department shall cause a complaint to be entered against the person and secure the issuance of a warrant for his arrest.

(6) The director and his authorized agents shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by a court, and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and

mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department.

No person shall be excused from attending or testifying or producing material, books, paper, correspondence, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

- (7) Where a condition or practice in a place of employment could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
 - (A) immediately inform the employees and employers of such hazard by meeting, posted notice, or otherwise;
 - (B) take steps to obtain immediate abatement of the hazard by the employer and where appropriate to initiate necessary legal proceedings to require such abatement.

§ -5 Fees. The director may prescribe reasonable fees to be charged for permits, certificates, or licenses, the issuance of which are required by this chapter or by any rule or regulation of the department, and for:

- (1) Inspection by the department of elevators, personnel hoists, man-lifts, aerial tramways, boilers, nuclear vessels, and unfired pressure vessels;
- (2) Inspection by the department of any machine, device, apparatus, or equipment for which a permit or certificate is required for its operation or use and which is required for its operation or use and which is required to be inspected by this chapter or by any rule or regulation of the department;
- (3) Examination of any person applying for permits, certificates, or licenses as required by this chapter or by any rule or regulation of the department.

All fees received by the department pursuant to this section shall be paid into the general fund of the State.

“§ -6 Employer responsibility. (a) Safe place of employment; safety devices and safeguards.

- (1) Every employer shall furnish employment and a place of employment which are safe for the employees therein as well as free from recognized hazards. No employer shall require or permit any employee to go or be in any employment or place of employment which

is not free from recognized hazards that are causing or likely to cause death or serious physical harm to employees or which does not comply with occupational safety and health standards promulgated under this chapter except for the specific purpose of abating said hazard.

- (2) Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe.
- (3) No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is not safe, and no employer shall occupy or maintain any unsafe place of employment.
- (4) Nothing in this chapter shall prevent the Secretary of Labor from requiring reports from employers under PL 91596 Section 8(c).
- (5) Each employer shall make, keep and preserve and make available to the department such records regarding his activities relating to this chapter as the department may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses.

The department shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

- (6) All employers shall be required to post prominently in the working place all posters and information provided by the department for posting as well as notices informing employees of their rights and obligations under this chapter.

“§ -7 Toxic materials. (a) The department shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured as prescribed under the rules and regulations.

(b) All employers shall prominently post information regarding hazards in his workplace including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, and where appropriate, medical examination at no cost to employees with the results of such medical examinations being furnished only to appropriate state officials, and if the employee so requests, to his own physician. Where possible, said information shall additionally be posted or labeled on or near said hazard. Where suitable protective equipment is available, all employers shall provide information concerning their availability and use to the affected employees including control or technological procedures with respect to such hazards including monitoring or measuring exposure.

(c) No employee shall be permitted regular exposure to any substance which may materially impair his health or functional capacity.

(d) All employers shall provide prompt information to employees when they have been or are being exposed to toxic materials and harmful physical agents in concentrations or at levels in excess of those prescribed in the applicable safety and health standards. This information may be fulfilled by:

- (1) Observation by employees of the monitoring or measuring of such materials or agents;
- (2) Employee access to the records of such monitoring or measuring after notice of exposure, and explanation of said monitoring or measuring procedures where necessary;
- (3) In addition to the above, information shall be provided to the employees of corrective action being taken.

“§ -8 Employee responsibility and rights. (a) Employee compliance. Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued under this chapter which are applicable to his own actions and conduct.

(b) Complaints to the department. Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(c) Opportunity for employees to participate in inspections. At the time and place of inspections under § -4(b) (2), (3), and (4), an opportunity shall be provided for employees and their representatives to bring possible violations to the attention of the authorized representative of the director conducting said inspection in order to aid inspections. This requirement may be fulfilled by allowing a representative of the employees and a representative of the employer to accompany the director's authorized representative during the physical inspection of the workplace, or in absence of the employees' representative, there shall be a consultation with a reasonable number of employees.

(d) Notice of nonaction to employees. The department shall notify the employees when the department decides not to take compliance action as a result of violations alleged by any employee or any representative of the employees. This notice shall be sent to the employer who shall post same prominently in the working place. This notice shall state the decision not to take compliance action, the reasons therefor, and the procedures for informal review of such decision.

(e) Discharge or suspension of employee for refusal to engage in unsafe practice prohibited.

- (1) No employer shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:

- (A) his failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or
- (B) his failure or refusal to engage in unsafe practices in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or

- (C) his failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or
 - (D) his filing a complaint, testifying or otherwise acting to exercise rights under this chapter for himself or others.
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer.
 - (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
 - (4) The director shall investigate said complaint and if he finds discrimination in violation of this chapter, he may order the employer to provide necessary relief to the employee including rehiring, reinstatement to former job with back pay and restoration of seniority.
 - (5) Nothing in this section shall prevent a penalty being levied against the employer under section 10.

“§ -9 **Explosives.** (a) Permits and certificates. No person shall manufacture or deal in explosives unless he has obtained a permit therefor and no person shall use explosives unless he has first obtained a certificate of fitness. A certificate of fitness shall only be issued to an individual and shall set forth his competency and provide for his positive identification. Certificates of fitness may be limited as to types or kinds of explosives or to the use of explosives for specific purposes.

(b) Manufacturer's reports; dealer's record and report. Manufacturers shall file a report with the director at the end of each calendar month giving in the report the names of all purchasers and the amount and description of all explosives sold or delivered and such other information as the director may require.

(c) Storage. No person shall have, store, keep, or possess explosives, or suffer them to remain in any building or upon any premises, unless the same are in a magazine complying with rules and regulations of the department governing the classes, type of construction, and capacity of magazines, the quantities and types or kinds of explosives which may be kept in the several classes of magazines, the location of permanent magazines, the safety precautions to be taken therein, and the places where movable magazines shall be kept and the duration of such keeping.

(d) Transportation. No person shall transport or cause any explosive to be transported except in compliance with rules and regulations of the department and without first having secured a permit from the director.

(e) Sale of; permits for purchase. No dealer shall sell or deliver explosives to any person who does not hold a certificate of fitness and a permit for the purchase thereof secured from the director or his authorized subordinates; and no dealer shall sell or deliver explosives except for the types or kinds and in the quantities as prescribed by, and in compliance with all the terms and conditions contained in the permit.

(f) Unlawful use or possession. It shall be unlawful for any person to use any explosives unless he has a certificate of fitness or is using the explo-

sives under the immediate supervision and direction of a holder of the certificate. It shall be unlawful for any person, other than a manufacturer or dealer, to have any explosives in his possession unless he has a permit therefor, or unless he has the explosives in his possession under the direction and for the purposes of a holder of the certificate.

(g) Revocation of permits and certificates. Any permit or certificate of fitness issued under this section may be revoked or suspended by the director on any ground specified in the rules and regulations promulgated under this chapter, or for any violation of this section.

(h) National emergency. Any permit or certificate issued under this section may, during any time of national emergency or crisis, be suspended or canceled by the director, and all explosives in the possession or control of any person may be purchased or seized and held in possession by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the owner thereof and the government of the United States or the government of the State may agree upon some other disposition of the explosives. A national emergency or crisis shall be deemed to exist when such has been so determined under §134-34.

(i) Exceptions. This section shall not apply to the armed forces of the United States or employees of the United States who are authorized by the United States to handle explosives.

“§ -10 Violations and penalties. (a) Any employer or person who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule or regulation issued under the authority of this chapter, or who violates or fails to comply with any notice or order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice or warning required by this chapter or any rule or regulation of the department shall be assessed a civil penalty not more than \$1,000 and not less than \$25.00 for each violation. Each day a violation continues shall constitute a separate violation except that during an abatement period, penalty may be suspended. Posting violations are also specifically covered by this penalty.

(b) Any employer who willfully or repeatedly violates this chapter, any occupational safety and health standard promulgated hereunder, or any rule or regulation issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$10,000 for each violation.

(c) Any employer who willfully violates any standard, rule, or order promulgated pursuant to this chapter and that violation caused death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year or by both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of willful conduct.

(d) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(e) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(f) Civil penalties owed under this chapter shall be paid to the department and may be recovered in a civil action in the name of the department and the State of Hawaii and brought in the district or circuit court for the district where the violation is alleged to have occurred or where the employer has its principal office.

(g) Notice of violation. When an alleged violation of standards has occurred, the department shall promptly issue a written order to the employer who shall be required to post said order in a prominent place. Said order shall include the proposed abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions.

“§ -11 Appeals. Any order of the director issued under this chapter shall be final and conclusive against the employer unless the employer, within twenty days after a copy of such order is received by him, petitions the appeals board for a review thereof. After hearing, the appeals board may set aside the order or continue it upon such terms and conditions as may be deemed necessary. The filing with the appeals board of a petition for review shall not stay or suspend the operation of the order, and no stay shall be granted by the appeals board pending its decision.

“§ -12 Judicial review. Decision of the appeals board shall be final and conclusive against the employer unless the employer obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.

§ -13 Trade secrets. Access to trade secrets shall be limited to authorized representatives of the director who shall protect the confidentiality of said trade secrets.

§ -14 Evidence. No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained or received in connection with the administration or enforcement of this chapter shall be admitted or used where as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination,

statement or report other than an action for enforcement or review under this chapter.

SECTION 2. Chapter 376, Hawaii Revised Statutes, is repealed upon the effective date of this Act provided that the rules and regulations promulgated under chapter 376 shall be continued until the necessary rules and regulations under the new Hawaii Occupational Safety and Health Law have been promulgated.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)

ACT 58

S. B. NO. 13

A Bill for an Act Relating to the Sale and Use of Pesticides and Amending Chapter 149, Hawaii Revised Statutes, and Repealing Chapter 151, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

HAWAII PESTICIDES LAW

PART I. GENERAL PROVISIONS

Sec. -1 Short Title. This chapter may be cited as the “Hawaii Pesticides Law”.

Sec. -2 Definitions. As used in this chapter, unless the content clearly requires otherwise:

(1) “Active ingredient” means:

- (A) In the case of pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pests;
- (B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
- (C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
- (D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

(2) “Adulterated means any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or

- in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.
- (3) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
 - (4) "Board" means board of agriculture.
 - (5) "Certified pesticide applicator" means any individual who is certified under section -20(1) as authorized to use or supervise the use of any pesticide which is classified for restricted use.
 - (6) "Chairman" means chairman of the board of agriculture.
 - (7) "Commercial pesticide applicator" means any certified pesticide applicator, whether or not he is a private pesticide applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by section -2(27).
 - (8) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
 - (9) "Department" means department of agriculture.
 - (10) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.
 - (11) "Device" means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating pests and classified within a class of devices which has been determined by the board.
 - (12) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.
 - (13) "Fungi" means all nonchlorophyll-bearing thallophytes including rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or living in man or other animals and those on or in processed foods, beverages, or pharmaceuticals.
 - (14) "General use pesticide" means a pesticide other than one designated as restricted pesticide.
 - (15) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.
 - (16) "Inert ingredient" means an ingredient which is not an active ingredient.
 - (17) "Ingredient statement" means:
 - (A) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide;
 - (B) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide;

- (C) In case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic; and
- (D) In case the pesticide is highly toxic to man, as determined in section -13 a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients.
- (18) "Insect" means invertebrate animals belonging to the class insecta including beetles, bugs, bees, flies, and other allied classes of arthropods, including spiders, mites, ticks, centipedes, and wood lice.
- (19) "Label" means the written, printed, or graphic matter, on or attached to the pesticide or device, or any of its containers or wrappers.
- (20) "Labeling" means all labels and other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Department of Agriculture and the Interior, the United States Department of Health, Education, and Welfare, state experiment stations, state agriculture colleges, or other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- (21) "Misbranded" means any pesticide or device if:
 - (A) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
 - (B) It is contained in a package or other container or wrapping which does not conform to the standards established by the board pursuant to section -13(c).
 - (C) It is an imitation of and is offered for sale under the name of another pesticide or device.
 - (D) Its labeling does not bear the federal registration number.
 - (E) Any advertisement by means of newspaper, leaflet, radio, or television is false or misleading in any particular.
 - (F) The labeling accompanying it does not contain instructions for use which are necessary, proper, and adequate for the protection of the public.
 - (G) The label does not contain warning or caution statements, which are necessary, proper, and adequate to prevent injury to living man and other vertebrate animals.
 - (H) The label does not bear an ingredient statement on the immediate container, or if there is an outside container or wrapper through which the ingredient statement on the immediate container cannot be clearly read, then on the outside container or wrapper.
 - (I) Any word, statement, or other information required by or under this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness and in such terms as to ren-

der it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

- (J) In the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.
- (K) In the case of a plant regulator, defoliant, or desiccant when used as directed it is injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides; provided that physical or physiological effects on plants or parts thereof shall not be deemed to be injury when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.
- (22) "Nematode" means invertebrate animals of the phylum nemathelminthes and the class nematoda including unsegmented round worms with elongated fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts.
- (23) "Person" means any individual, firm, corporation, association, or partnership, or any organized group of persons whether incorporated or not.
- (24) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the board declares to be a pest.
- (25) "Pesticide" means:
 - (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- (26) "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
- (27) "Private pesticide applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person.
- (28) "Producer" means any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. "Produce"

means to manufacture, prepare, compound, propagate, or process any pesticide or device.

- (29) "Protect health and the environment" or "protection of health and the environment" means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.
- (30) "Restricted pesticide" means:
 - (A) A pesticide so designated by regulations under the Federal Environmental Pesticide Control Act and so designated on its label; or
 - (B) A pesticide determined by the board to be unsafe for use by persons other than a certified applicator.
- (31) "Registrant" means the person registering any pesticide pursuant to this chapter.
- (32) "Sell or distribute" means to distribute, solicit, sell, offer for sale, hold for sale, transport, or deliver for transportation in intrastate commerce or between points within the State through any point outside the State.
- (33) "Substantial adverse effects on the environment" means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.
- (34) "Weed" means any plant which grows where not wanted.

Sec. -3 Delegation of duties. All authority vested in the board or chairman by virtue of this chapter may with like force and effect be exercised by such employees of the department as the board or chairman may from time to time designate for the purpose.

Sec. -4 Effect of chapter on department of health. Nothing in this chapter shall be construed to amend or alter the functions, duties, and powers of the department of health relative to chapters 321, 322, 328, 330, and 450.

PART II. PESTICIDE REGISTRATION AND SALE

Sec. -5 Prohibited acts. (a) Except as otherwise exempted in section -6, it shall be unlawful for any person to distribute, solicit, sell, offer for sale, hold for sale, transport, deliver for transportation, or receive and having so received, deliver or offer to deliver to any person in intrastate commerce or between points within this State through any point outside this State any of the following:

- (1) Any pesticide which is not registered pursuant to section -7, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its

- registration; provided that, in the discretion of the chairman, a change in the labeling or formula of a pesticide may be made within a registration period without requiring an additional registration of the product.
- (2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to the container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing such information pursuant to section -9.
 - (3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section -13, unless the label bears, in addition to any other matter required by this part:
 - (A) A symbol of the skull and crossbones;
 - (B) The word "POISON" prominently, in red, on a background of distinctly contrasting color; and
 - (C) A statement of an antidote for the pesticide.
 - (4) The pesticides containing any of the ingredients commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate, unless they have been distinctly colored or discolored or any other white powder pesticide which the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, requires to be distinctly colored or discolored, unless it has been so colored or discolored pursuant to section -10.
 - (5) Any pesticide which is adulterated or misbranded.
 - (6) Any pesticide or device that is an imitation of another pesticide or device.
 - (7) Any restricted pesticides unless the person has a license issued in accordance with section -11.
 - (8) Any restricted pesticides to persons other than a certified pesticide applicator or a licensed dealer, wholesaler, or retailer.
 - (b) It shall be unlawful to:
 - (1) Detach, alter, deface, or destroy, in whole or in part, any label or alter any labeling of a pesticide unless such action is taken with the approval of the chairman to correct an improper label or labeling.
 - (2) Add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this part.
 - (3) Use for a person's own advantage or to reveal any information relative to formulas of products acquired in the administration of this chapter, to persons other than to the chairman or proper officials or employees of the State, or the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes.

- (4) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted pesticides unless the dealer, wholesaler, or retailer has applied for and has obtained an annual license from the department.
- (5) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted pesticides to any person other than a certified pesticide applicator.

Sec. -6 Exemptions. (a) The prohibitions of section -5(a) shall not apply to:

- (1) Any carrier while lawfully engaged in transporting a pesticide within this State, if the carrier, upon request, permits the chairman or his designated agent to copy all records showing the transactions in and movement of the articles;
- (2) Public officials of the State and the federal government engaged in the performance of their official duties in administering state or federal pesticide law or regulation or while engaged in pesticide research; and
- (3) The manufacturer or shipper of a pesticide intended only for experimental use:
 - (A) By or under the supervision of an agency of the State or of the federal government authorized by law to conduct research in the field of pesticides;
 - (B) If the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold" together with the manufacturer's name and address;
 - (C) If a written permit has been obtained from the chairman, authorizing pesticides to be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

(b) No article shall be deemed in violation of this part when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this part shall apply.

Sec. -7 Pesticide registration. (a) Any pesticide which is sold, offered for sale, or distributed, within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the board; provided that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide, may be registered as a single pesticide, and additional names and labels shall be added by supplemental statements during the current period of registration. To be acceptable for registration, any pesticide, subject to any federal act providing for registration of pesticides, must have been registered under this chapter. The registrant shall file with the chairman a statement including:

- (1) The name and address of the registrant and the name and address of

the person whose name will appear on the label, if other than the registrant;

- (2) The name of the pesticide;
- (3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use; and
- (4) If requested by the chairman a full description of the tests made and the results thereof upon which the claims are based.

(b) The registrant shall pay a minimum annual fee of \$10 for each pesticide registered. Registration fee may be increased from time to time by regulation but such increases shall not be in excess of \$5 for any one year. The registration shall expire on December 31 of each year and shall be renewed annually. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered. All fees collected shall be deposited in the general fund of the State.

(c) The chairman, whenever he deems it necessary in the administration of this part, may require the submission of the complete formula of any pesticide. If it appears to the chairman that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section -9, he shall register the article.

(d) Notwithstanding any other provision of this part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State when both plants are operated by the same person.

Sec. -8 Refusal, cancellation, or suspension of registration.

(a) The chairman may refuse to register a pesticide when he determines that:

- (1) The pesticide or its labeling does not comply with this chapter or the regulations promulgated thereunder; or
- (2) The registrant fails to comply with the registration procedures set forth by regulation; or
- (3) The claims, representations, or other statements on the label are false or misleading; or
- (4) The proposed use would result in substantial adverse effect on the environment.

(b) To protect the health and environment, the chairman may, after hearing, cancel the registration of a pesticide. Such cancellation shall be made after the chairman has determined that the continued use of the pesticide would result in substantial adverse effects on the environment.

(c) If the chairman determines that action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of a pesticide immediately. The suspension order shall be in effect until the chairman issues his final order either cancelling or denying the cancellation of the registration.

(d) The registrant shall be entitled to contest under chapter 91, the determinations of the chairman relative to refusing, cancelling, or suspending a pesticide registration.

Sec. -9 Labeling requirements. (a) Each container of pesticides shall bear thereon or attached thereto in a conspicuous place, a plainly written or printed label in the English language providing the following information:

- (1) Name, brand, or trade-mark under which the pesticide is sold or distributed;
- (2) Ingredient statement as specified by regulation;
- (3) Direction for use which if complied with will adequately protect the health and environment;
- (4) Warning or caution statement as specified by regulation;
- (5) Name and address of the manufacturer, registrant, or person for whom manufactured; and
- (6) Weight or measure of content.

Sec. -10 Coloration of certain pesticides. (a) Pesticides known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate shall be distinctly colored as specified by regulation.

(b) The chairman may, after hearing, require the coloration of other pesticides that he determines to be necessary to protect the health and environment.

(c) The chairman may exempt the coloration requirements for certain uses that he determines not to have substantial adverse effect on the environment.

Sec. -11 Sales, license, and record. (a) Every person who sells or distributes restricted pesticides shall obtain an annual license from the department. Conditions, procedures, and fees for license shall conform to the regulations promulgated hereunder.

(b) All persons licensed to sell restricted pesticides shall keep records of the individual sales of such pesticides. Records shall be kept at the principal place of business of the licensee for a period specified by rules and regulations and shall be available to the chairman on request.

Sec. -12 Suspension or revocation of license. Any license issued pursuant to regulations adopted under section -11(a) may be suspended or revoked by the board, after due hearing, for violation of any condition of the license or of any law or regulation pertaining to the sale of pesticides.

Any order made by the board for the suspension or revocation of a license shall be in writing and shall set forth the reasons for the suspension or revocation.

The action of the board in suspending or in revoking a license may be reviewed in the manner provided by chapter 91.

Sec. -13 Determination; rules and regulations; uniformity.

(a) The board shall after having afforded interested and affected parties an opportunity to be heard and, in instances in which human health is affected,

after consultation with the director of health, make and adopt regulations:

- (1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;
 - (2) To determine the pesticides which are highly toxic to man; to designate pesticides as restricted or general use; and to establish a system of control over the distribution and use of certain pesticides purchased by the consuming public;
 - (3) To determine standards of coloring for pesticides, and to subject pesticides to the requirements of section -10;
 - (4) To establish procedures, conditions, and fees for the issuance of licenses for sale of restricted pesticides;
 - (5) To establish fees for the registration of pesticides within the limitations of section -7(b);
 - (6) To establish procedures for the registration of pesticides; and
 - (7) To establish procedures for the disposal of pesticides.
- (b) The board shall, after public hearing, make and adopt appropriate rules and regulations for carrying out this part, including rules and regulations providing for the collection and examination of samples of pesticides or devices.
- (c) The board shall, after public hearing, adopt such regulations, applicable to and in conformity with the primary standards established by this part, as have been or may be prescribed by the appropriate federal agency with respect to pesticides.

Sec. -14 Seizures; "stop-sale" and "removal from sale" orders. (a) Any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this part, may be seized. Any article seized hereunder shall, after entry of decree, be disposed of by destruction or sale as the court directs and the proceeds, if the article is sold, less legal costs, shall be paid to the general fund of the State; provided that the article shall not be sold contrary to this part; and provided that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct the article to be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(b) The chairman or his authorized agent may issue and enforce a written or printed "stop-sale" or "removal from sale" order to withhold from sale any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this part.

Sec. -15 Enforcement. (a) If it appears that a pesticide or device fails to comply with this part, the chairman may refer the facts with a copy of the results of the analysis or the examination of the articles to the appropriate governmental agency for prosecution. A warning notice shall be issued before prosecution proceedings are initiated.

(b) The governmental agency to which any violation is reported may cause appropriate proceedings to be instituted in the appropriate court without delay if so warranted.

(c) The chairman shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under this part.

Sec. -16 Violations, warning notice, and penalty.

(a) Any person who violates this part or any rule or regulation issued hereunder shall upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Any person who knowingly violates this part or any rule or regulation hereunder after receipt of a notice issued pursuant to subsection (a) shall be punished by a fine of not more than \$1,000.

Sec. -17 Cooperation. The board may cooperate with, and enter into agreements with, any other agency of the State or the federal government, or any agency thereof for the purpose of carrying out this part and securing uniformity of regulations.

PART III. PESTICIDE USE

Sec. -18 Prohibited acts. No person shall:

- (1) Apply any pesticide in excess of dosage or inconsistent with time or other limitations specified on its label registered under section -7;
- (2) Apply any pesticide on any agricultural crop, livestock, or residential, recreational, watershed, or any other area that is prohibited or not specified on its label registered under section -7;
- (3) Use, store, transport, or discard any pesticide or the containers of such pesticide in any manner which would have substantial adverse effect on the environment;
- (4) Use or apply restricted pesticides unless the person is a certified pesticide applicator with a valid certificate issued pursuant to regulations adopted under section -20(1); or
- (5) Use or apply pesticides in any manner that has been banned pursuant to section -19.

Sec. -19 Banning of pesticides. In order to protect the public and the environment, the chairman, in consultation with advisory committee on pesticide and approval of the director of health, may ban the use of certain pesticides or specific uses of certain pesticides when such usage is deemed to have substantial adverse effects on the environment. The chairman shall take necessary action to cancel the registration of such banned pesticides or uses as provided in section -8(b).

Sec. -20 Rules and regulations. The department shall have the authority to carry out and effectuate the purpose of this part by rules and regulations, including but not limited to the following:

- (1) To establish procedures, conditions, and standards to certify persons for the use of restricted pesticides;
- (2) To establish limitations and conditions for the application of pesticides by aircraft, power rigs, mist blowers, and other equipment; and

- (3) To establish, as necessary, specific standards and guidelines which specify those conditions which constitute substantial adverse effect on the environment.

Sec. -21 Suspension or revocation of certificate. Any certificate issued pursuant to regulations adopted under section -20(1) may be suspended or revoked by the board, after hearing, for violation of any condition of the certificate or of any law or regulation pertaining to the use of any restricted pesticide. Any order made by the board for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. The action of the board in suspending, or in revoking a certificate may be reviewed in the manner provided by chapter 91.

Sec. -22 Cooperation. The department is authorized and empowered to cooperate with and enter into agreements with any agency of the State, the federal government, or any other agency for the purpose of carrying out this part. The University of Hawaii cooperative extension service and other educational agencies shall provide educational programs aimed at assisting users and prospective users of pesticides and shall solicit the aid of the department in providing technical assistance and advice on the authorized use of pesticides.

Sec. -23 Authority to inspect. The department or any authorized representative or employee of the department may enter upon any public or private property, according to law at any reasonable time to examine and inspect application methods and equipment, to examine and collect samples of plants, soil, and other materials, and to perform any other duty for the purpose of carrying out and effectuating the purposes of this part.

Sec. -24 Exemptions. Exemption from this part may be granted by the chairman to the University of Hawaii and other state and federal agencies for experimental or research work directed toward obtaining knowledge of the characteristics and proper usage of unspecified or experimental pesticides. Research and experimental work conducted by private agencies with adequate research facilities may also be similarly exempted upon approval by the chairman. Approval must be in writing stating the specific exemptions and conditions.

Sec. -25 Violations, warning notice, and penalty.

(a) Any person who violates this part or any rule or regulation issued hereunder shall upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Any person who knowingly violates this part or any rule or regulation hereunder after receipt of a notice issued pursuant to subsection (a) shall be punished by a fine of not more than \$1,000.

PART IV. ADVISORY COMMITTEE

Sec. -26 Advisory committee. There shall be an advisory committee on pesticides composed of but not limited to the chairman, or his designated

representative, who shall head the committee and one representative each from the department of health, department of land and natural resources, University of Hawaii agricultural experiment station, University of Hawaii cooperative extension service, state environmental organization, sugar industry, pineapple industry, livestock industry, Hawaii farm bureau federation, diversified crop industry, pesticide industry, structural pest control industry and three at-large members. Members of the advisory committee shall be appointed by the governor from a list of persons recommended by the respective agencies and industries in accordance with section 26-34. The committee shall advise and assist the department in developing or revising laws and regulations to carry out and effectuate the purposes of this chapter and in advising the department in pesticide problems.

Sec. -27 Severability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected.

Sec. -28 Applicability of chapter 91. The board shall, in the administration of this chapter, conform to the provisions of chapter 91."

SECTION 2. Chapter 149 and chapter 151, Hawaii Revised Statutes, are repealed.

SECTION 3. This Act shall take effect upon its approval except that the certification required by section -17(1) shall be effective one year from the effective date of this Act.

(Approved May 19, 1972.)

ACT 59

S. B. NO. 53

A Bill for an Act Relating to the Interdepartmental Transportation Control Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that transportation units in the State (1) constitute the single largest factor in poisoning the environment of Hawaii; (2) contribute in major proportions to ugliness, overcrowding, and pollution of Hawaii's air, water, and land; (3) affront the senses of all; and (4) present crucial health and safety hazards to the people of the State.

The purpose of this Act is to forestall devastation of the State resulting from adverse environmental effects of the various modes of transportation by establishing the interdepartmental transportation control commission and providing for limiting and curtailing the numbers and kinds of transportation units in the State.

SECTION 2. Interdepartmental transportation control commission. There is established the interdepartmental transportation control commission consisting of the director of environmental quality control, the director of

health, the director of transportation, and the director of planning and economic development. The commission shall determine annually, after consultation with the department of traffic and other appropriate departments of the respective counties, the number and size of transportation units of any kind whether they operate on the ground or over the ground, that may be within the territory of any island of the State at any one time. The commission shall make its determination on the basis of preserving, safeguarding, and enhancing the physical and mental health of the residents of the State, and the ecology and environmental quality of the State, and shall take into consideration the need for high priority and vital movement of people and goods.

SECTION 3. Commission report to legislature; legislation. The inter-departmental transportation control commission shall report its determinations made as provided in section 2 to the legislature twenty days prior to the opening of each regular session of the legislature. The legislature, on the basis of the annual commission report, shall transmit to the governor a bill to limit the number and size of transportation units of any kind that may be within the territory of any island of the State at any one time for the ensuing fiscal year.

SECTION 4. Effective date. This Act shall take effect upon its approval.
(Approved May 19, 1972.)

ACT 60

S.B. NO. 124

A Bill for an Act Relating to Medical Reports of Injuries and Treatment under Workmen's Compensation Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-96, Hawaii Revised Statutes, is amended to read:

"Section 386-96 Reports of physicians, surgeons, and hospitals. Any physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall make a report of the injury and treatment on forms prescribed by and to be obtained from the department as follows:

- (1) Within seven days after the date of first attendance or service rendered, a report shall be made to the department and to the employer of the injured employee in the manner prescribed by the department.
- (2) Interim reports to the same parties and in the same manner as prescribed in paragraph (1) shall be made at intervals of twenty-one days or less during continuing treatment.
- (3) Final report to the same parties and in the same manner as prescribed in paragraph (1) shall be made within seven days after termination of treatment.

No claim under this chapter for medical or surgical treatment, or hospital services and supplies, shall be valid and enforceable unless the reports are made as provided in this section, except that the director may excuse the failure to make the report within the prescribed period or a non-submission of

said report when he finds it in the best interest of justice to do so. If the director does not excuse such a submission of a final report which is 30 days late or a non-submission, the delinquent physician shall be fined in an amount not to exceed \$25.

The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one physician or surgeon should treat or examine the employee, a copy of the final report of each physician or surgeon.

Within fifteen days after being requested to do so by the injured employee or his duly authorized representative, the employer shall furnish the employee or his duly authorized representative with copies of all medical reports relating to the employee's injury which are in the possession of the employer. The copies shall be furnished at the expense of the employer. Any employer who fails to furnish medical reports as required by this paragraph shall be fined in an amount not to exceed \$100.

Deposit of the reports required by the first paragraph of this section in the United States mail, addressed to the director and to the employer, within the time limit specified, shall be deemed compliance with the requirements of this section."

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 61

S. B. NO. 1061

A Bill for an Act Relating to the Criminal Injuries Compensation Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 351, Hawaii Revised Statutes, is amended in the following respects:

a. By amending section 351-2 to read:

"Sec. 351-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Child" means an unmarried person who is under twenty years of age and includes a stepchild or an adopted child;

"Commission" means the criminal injuries compensation commission established by this chapter;

"Dependents" mean such relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after his death;

*Edited accordingly.

"Injury" means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and "Injured" has a corresponding meaning;

"Private citizen" means any natural person other than a policeman who is actively engaged in the performance of his official duties;

"Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

"Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section 351-32 of this chapter."

b. By amending section 351-17 to read:

"Sec. 351-17 Reconsideration by commission; judicial review. (a) the criminal injuries compensation commission may, at any time, on its own motion or on the application of any person aggrieved by an order or decision of the commission, reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission.

(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the Supreme Court, provided the appeal is filed within thirty days after service of an original or a certified copy of such order or decision. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review."

c. By amending subsection 351-31(a) to read:

"(a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim; or
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death; or
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To a parent of an adult deceased victim, or to an adult son or daughter of a deceased victim, where the parent, or adult son or daughter, has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim's injury and death."

(d) By amending section 351-61 to read:

"Sec. 351-61 Terms of order. Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be

made on such terms as the criminal injuries compensation commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, for the payment of the compensation in a lump sum or periodic installments, and for the payment of compensation for hospital, medical, funeral, or burial expenses directly to the person who has provided such services. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this chapter are subject to the making of an appropriation by the legislature to pay the claim, except as otherwise provided in section 351- (Emergency payment fund; when payments authorized)."

e. By amending subsection 351-63(a) to read:

"(a) In determining the amount of compensation to be awarded under this chapter, the criminal injuries compensation commission shall deduct amounts or benefits received or to be received from any other source, whether from the offender or from any person on behalf of the offender, or from public or private funds, and which amounts or benefits result from or are in any manner, directly or indirectly, attributable to the injury or death which gave rise to the award; provided that no deduction shall be made for death benefits received or to be received under any insurance policy covering the life of a deceased victim."

f. By adding to part V a new section to be appropriately numbered and to read:

"Sec. 351- Emergency payment fund; when payments authorized. (a) There is established a criminal injuries compensation emergency payment fund from which the criminal injuries compensation commission may make payments as provided in subsection (b). The director of finance shall be custodian of the fund, and all payments therefrom shall be paid by him upon orders by the commission.

(b) Where the criminal injuries compensation commission has made an award pursuant to this chapter and determines that there is an immediate need of funds in order to meet expenses incurred as a direct or indirect result of injury or death, the commission is authorized to make such emergency payments to or on behalf of the victim, or to or for the benefit of one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim's injury or death, as the commission in its discretion deems appropriate. Payments made pursuant to this section shall not exceed the total amount of the award and shall serve to reduce the amount of the claim for legislative relief sought pursuant to section 351-70.

(c) The amount by which an award of compensation is reduced upon a claim for legislative relief under section 351-70 shall be redeposited into the criminal injuries compensation emergency payment fund established by this section, to be applied to making other emergency payments as authorized by the criminal injuries compensation commission."

SECTION 2. There is appropriated out of the general revenues of the State the sum of \$25,000 for the purpose of establishing the criminal injuries compensation emergency payment fund.

SECTION 3. Statutory materials to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 62

S. B. NO. 1368-72

A Bill for an Act Relating to Requirements for Temporary License to Practice Pharmacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 461-7, Hawaii Revised Statutes, is amended to read:

"Sec. 461-7 Temporary license. An applicant for examination who possesses all of the qualifications except residence required of applicants may be granted a temporary license by the board of pharmacy; provided that he shall first pass a preliminary examination with a grade of not less than seventy per cent covering State laws and public health regulations relating to drugs, poisons, and devices used in the practice of pharmacy in the State. A temporary license shall not entitle the holder thereof to a permanent license, and no permanent license shall be issued until he has passed the regular examination set forth under section 461-6. Only one temporary license shall be issued to the same applicant. A temporary license shall only remain in effect until the results of the next regular examination are announced, provided, that the board may extend any temporary license, upon written application, for good and just cause. Any applicant who fails to take or to pass the next regular examination shall surrender his temporary license. The board shall receive the sum of \$12 for the issuance of a temporary license."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Wage Discrimination.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 387-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 387-4 Wage discrimination prohibited. No employer shall discriminate in any way in the payment of wages as between persons of different races or religions or as between the sexes; provided, that nothing herein shall prohibit a variation of rates of pay for employees engaged in the same classification of work based upon a difference in seniority, length of service, substantial difference in duties or services performed, difference in the shift or time of day worked, or hours of work; and provided that an employer who is paying a wage rate differential in violation of this section shall not, in order to comply with this section, reduce the wage rate of any employee."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

A Bill for an Act Relating to Discriminatory Practices Affecting Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 378-2 Discriminatory practices made unlawful; offenses defined. It shall be unlawful employment practice or unlawful discrimination:

- (1) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color, or ancestry, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;
- (2) For an employer to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, or ancestry;
- (3) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publica-

*Edited accordingly.

tion or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, sex, age, religion, color, or ancestry, unless based on a bona fide occupational qualification;

- (4) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer, or employees because of race, sex, age, religion, color, or ancestry;
- (5) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified, or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;
- (6) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the practices forbidden by this part, or to attempt to do so;
- (7) For any employer or labor organization to refuse to enter into an apprenticeship agreement, as defined in section 372-2, because of the race, sex, age, religion, color, or ancestry of an apprentice; provided that no apprentice shall be less than sixteen years of age."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 65

S. B. NO. 1471-72

A Bill for an Act Relating to Drug Abuse Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 127, Session Laws of Hawaii 1970, is amended by amending Section 1 to read as follows:

"Section 1. There is hereby appropriated out of the general revenues of the State the sum of \$75,000, or so much thereof as may be necessary, to the office of the governor to be expended in contracts with existing county agencies for enforcement and with qualified nonprofit private organizations for education and rehabilitation projects relating to drug abuse. "Drug" as used in this section includes "alcohol" and "intoxicating liquor".

*Edited accordingly.

SECTION 2. Statutory material to be appealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 66

S. B. NO. 1518-72

A Bill For an Act Relating to Registration of Birth, Death, Marriage and Divorce.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 338, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending Section 338-15 to read:

"Sec. 338-15 Delayed or altered certificates. A person born in the State may file or amend a certificate after the time prescribed, upon submitting such proof as shall be required by regulations of the department of health. Certificates registered after the time prescribed for filing by the regulations of the department of health shall be registered subject to such evidentiary requirements as the department shall by regulation prescribe to substantiate the alleged facts of birth."

2. By amending Section 338-16 to read:

"Sec. 338-16 Procedure concerning delayed and altered birth certificates.

(a) Birth certificates registered one year or more after the date of birth, and certificates which have been altered after being filed with the department of health, shall contain the date of the delayed filing and the date of the alteration and be marked distinctly 'delayed' or 'altered'.

(b) A summary statement of the evidence submitted in support of the acceptance for delayed filing or the alteration shall be endorsed on the certificates.

(c) Such evidence shall be kept in a special permanent file.

(d) When an applicant does not submit the minimum documentation required by the regulations for delayed registration or when the State registrar finds reasons to question the validity or adequacy of the certificate or the documentary evidence, the State registrar shall not register the delayed certificate and shall advise the applicant of the reason for this action.

The department of health may by regulation provide for the dismissal of an application which is not actively prosecuted."

3. By adding two new sections to Part I to read:

"Sec. 338- Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under Section 338-15, a

*Edited accordingly.

petition may be filed with the circuit court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition shall be accompanied by a statement of the registration official made in accordance with Section 338-16(d) and all documentary evidence which was submitted to the registration official in support of such registration.

(c) The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of birth fifteen days' notice of said hearing. Such official, or his authorized representative, may appear and testify in the proceeding.

(d) If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order to establish a record of birth.

(e) The clerk of the court shall forward a copy of the order to the State registrar of vital statistics not later than the 10th day of the calendar month following the month in which it was entered. Such order shall be registered by the State registrar of vital statistics in accordance with section 338-13.

Sec. 338- Delayed registration of death, fetal death, marriage, and divorce.

(a) When a death, fetal death, marriage, or divorce occurring in this State has not been registered, a certificate may be filed in accordance with regulations of the department of health. Such certificate shall be registered subject to such evidentiary requirements as the department shall by regulation prescribe to substantiate the alleged facts of death, fetal death, or marriage or divorce.

(b) Certificates of death, fetal death, marriage or divorce registered one year or more after the date of occurrence shall be marked 'delayed' and shall show on the face the date of the delayed registration."

4. By amending Section 338-41 to read:

"Sec. 338-41 Issuance; procedure.

(a) The department of health may make regulations respecting the form of Hawaiian birth certificates and certified copies of such certificates and other matters relating to Hawaii birth certificates as appear necessary and the regulations, when approved and made in accordance with chapter 91, shall have the force of law. The department shall furnish the form of the certificates and copies made therefrom.

(b) Any certificate of Hawaiian birth issued heretofore under or by virtue of any law of the Territory of Hawaii or the State, shall be prima facie evidence of the facts therein stated."

5. By amending Section 338-42 to read:

"Sec. 338-42 Fees. Fees shall be charged in connection with the issuance of the certificates as follows: for every certified copy of a certificate, \$1, and, in addition, 50 cents for each one hundred words or portion thereof

contained in the certificate; provided, that the fees shall not be charged in connection with the issuance of such certificates to children under the age of sixteen years who are permanent inmates of homes or institutions in the State which are supported in whole or in part by public charity or taxation. All such fees collected shall be deposited with the director of finance of the State to the credit of the general fund."

6. By repealing Section 338-43.

Section 338-43 Perjury. Any applicant or any person, who gives or offers any false testimony, oral or written, under oath, in support or respect of any application for a certificate under section 338-41, shall be deemed guilty of perjury and shall be punishable accordingly."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed matter, or the underscoring.*

SECTION 3. This Act shall take effect upon approval.

(Approved May 19, 1972.)

ACT 67

S. B. NO. 1577-72

A Bill for an Act Relating to Inspection Fees for Certification of Chicken Eggs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 147-74, Hawaii Revised Statutes, is amended to read:

"Sec. 147-74 Grading standards and regulations. Subject to chapter 91, the department of agriculture may make rules and regulations with respect to:

- (1) Sale and transportation for sale of eggs for human consumption;
- (2) Specific grades or standards of quality, condition and size or weight classes which shall conform when practical to those established by the United States Department of Agriculture as local conditions will permit;
- (3) Inspection and classification;
- (4) Assessment and collection of fees for requested certification as to grade, standard of quality, condition, and size or weight classes;
- (5) Labeling of containers of imported and locally produced eggs;
- (6) Seller's invoice for sale of eggs;
- (7) Records of imported shell eggs of foreign origin;
- (8) Enforcement of this part and of the rules and regulations promulgated under this part."

*Edited accordingly.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 68

S. B. NO. 1694-72

A Bill for an Act Making an Appropriation for a Public Park at Sand Island, Oahu.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is hereby appropriated out of moneys in the treasury received from general obligation bond funds the sum of \$1,000,000, or so much thereof as may be necessary, for the construction and further development of a park at Sand Island, said park to be situated within the area extending along the shoreline between the coast guard facility to the Sand Island access road. The sum appropriated may be used for matching purposes with federal funds if deemed necessary.

SECTION 2. The director of finance is authorized to issue general obligation bonds of the State in the amount of \$1,000,000 to be used for the purposes of this Act.

SECTION 3. The sum appropriated herein shall be expended by the department of land and natural resources.

SECTION 4. This Act shall take effect on July 1, 1972.

(Approved May 19, 1972.)

ACT 69

S. B. NO. 1719-72

A Bill for an Act Amending Chapter 286, Hawaii Revised Statutes, Relating to Forfeiture of Vehicle or Parts Thereof.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-44, Hawaii Revised Statutes, is hereby amended to read as follows:

"Sec. 286-44 Unlawful to possess certain motor vehicles, parts, etc.; forfeiture. It shall be unlawful for any person to possess a motor vehicle, a motor block, or any part thereof, knowing that the motor number, serial number, or manufacturer's number, placed on same by the manufacturer for the purpose of identification, has been changed, altered, erased, or mutilated, for the purpose of changing the identity of the motor vehicle, motor, motor

*Edited accordingly.

block, or any part thereof. All such motor vehicles, motor blocks or parts from which the manufacturer's identification number has been removed, defaced, or altered shall be forfeited to the county where found and if not identified may be sold at public auction or destroyed. If identified, all persons having an interest in it shall be notified, there shall be assigned a new registration number and it shall be returned to the owner entitled to possession.

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes may exclude the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 70

S. B. NO. 1749-72

A Bill for an Act Relating to Savings and Loan Association.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 407-92, Hawaii Revised Statutes, is amended by deleting \$50,000.00 and adding \$75,000.00 in the first sentence thereof.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 71

S. B. NO. 1805-72

A Bill for an Act Relating to Organized Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings and purpose.** The legislature finds that organized crime with its increasing affluence and power resulting from the investment of large sums of illegally procured wealth poses a significant threat to the safety and welfare of the State of Hawaii and that such illicit capital, seeking the protection of the corporation and other business laws of the State, could finance organized crime under the authority of law by creating legal entities fully clothed with respectability and capable of holding legal title to property.

The purpose of this Act is to authorize the attorney general to bring actions to forfeit the charters of domestic corporations, to cancel registrations and licenses of foreign corporations, to enjoin the operations of unincorporated businesses when such entities are infiltrated by organized crime, and further, to prohibit the ownership or operation of business by certain persons; to provide penalties and provisions for forfeiture of property; to provide provisions for restraining orders, civil remedies, evidence, civil investigative demands, prohibited affirmative defense, and the inspection of tax records by chiefs of police.

*Edited accordingly.

SECTION 2. Hawaii Revised Statutes is amended by adding a new part to be appropriately designated and to read as follows:

"Sec. -1 Definitions: As used in this part, 'organized crime' means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, corruption of law enforcement officers or other public officers or employers.

'Racketeering activity' means any act or threat involving, but not limited to murder, kidnapping, gambling, arson, robbery, bribery, extortion, larceny or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year.

'Person' includes any individual or entity capable of holding a legal or beneficial interest in property.

'Enterprise' includes any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity.

'Unlawful debt' means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state law in whole or in part as to principal or interest because of the law relating to usury.

"Sec. -2. Ownership or operation of business by certain persons; prohibited. It shall be unlawful:

- (1) For any person who has received any income derived, directly or indirectly, from a racketeering activity or through collection of an unlawful debt, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise.
- (2) For any person through a racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
- (3) For any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.

"Sec. -3. Penalty; forfeiture of property. Whoever violates this part shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall forfeit to the State any interest or property he has acquired or maintained in violation of this part.

Upon conviction of a person under this part, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, to seize all property or other interest declared forfeited under this part upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this part as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire, and shall not revert to the convicted person.

"Sec. -4. Prohibited affirmative defense. The affirmative defense of being a player in a social gambling game is not available to a person engaged in organized crime or who is connected directly or indirectly with persons who are engaged in organized crime.

"Sec. -5. Forfeiture of corporate charters and cancellation of registrations and licenses. The attorney general may institute civil proceedings in the circuit court to forfeit the charter of any corporation organized under the laws of this State and to cancel the registration and license authorizing any foreign corporation to carry on business or charitable work in this State, when:

- (1) (A) Any of the corporate officers or any other person controlling the management or operation of the corporation, with the knowledge of the president and a majority of the board of directors or under circumstances wherein the president and majority of the directors should have such knowledge, is engaged in organized crime or who is connected directly or indirectly with organizations or criminal societies engaging in organized crime, or
- (B) A director, officer, employee, agent, or stockholder acting for, through, or on behalf of a corporation, in conducting the corporation's affairs, purposely engages in a persistent course of organized crime with the knowledge of the president and a majority of the board of directors or under circumstances wherein the president and a majority of the directors should have such knowledge, with the intent to compel or induce other persons, firms, or corporations to deal with the corporation or to engage in organized crime; and
- (2) The public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the registration and license to be cancelled, for the prevention of future illegal conduct of the same character.

"Sec. -6. Enjoining other business operations. The attorney general may institute civil proceedings in the circuit court to enjoin the operation of any business other than a corporation, including a partnership, limited partnership, unincorporated association, joint venture, or sole proprietorship, when:

- (1) Any person in control of the business, who may be a partner in a partnership or in a limited partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any such business, or a person who, in fact, exercises control over the operations of the business in conducting business affairs, purposely engages in a persistent course of organized crime with the intent to compel or induce other persons, firms, or corporations to deal with the business or engage in organized crime; and
- (2) The public interest requires the operation of the business to be enjoined, for the prevention of future illegal conduct of the same character.

"Sec. -7. Commencement and conduct of proceedings under Sections -5 and -6. (a) The proceedings authorized by Section -5 may be instituted against a corporation in any judicial circuit in which it is doing business or carrying on its work and the proceedings shall be conducted in accordance with the Hawaii Rules of Civil Procedure and the applicable rules of court. These proceedings shall be additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or cancelling the registration and license of a foreign corporation.

(b) The proceedings authorized by Section -6 may be instituted against a business other than a corporation in any judicial circuit in which it is doing business and the proceedings shall be conducted in accordance with the Hawaii Rules of Civil Procedure and the applicable rules of court.

"Sec. -8. Civil remedies. (a) The circuit courts of the State shall have jurisdiction to prevent and restrain violations of this part by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The attorney general may institute proceedings under this section. In any action brought by the State under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of this part may sue therefor in any appropriate court and shall recover the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the State in any criminal proceeding brought by the State under this part shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the State.

"Sec. -9. Evidence. In any proceeding ancillary to or in any civil action instituted by the State under this part the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

"Sec. -10. Civil investigative demand. (a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

- (b) Each such demand shall:
 - (1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;
 - (2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;
 - (3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and
 - (4) identify the custodian to whom such material shall be made available.
- (c) No such demand shall:
 - (1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the State in aid of a grand jury investigation of such alleged racketeering violation; or
 - (2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the State in aid of a grand jury investigation of such alleged racketeering violation.
- (d) Service of any such demand or any petition filed under this section may be made upon a person by:
 - (1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;
 - (2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or
 - (3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.
- (e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.
- (f) (1) The attorney general shall designate, from the organized crime unit established pursuant to section 28-71, an investigator to serve as racketeer document custodian and such racketeering investigators as he shall determine to be necessary to serve as deputies to such officer.
- (2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section

on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

- (3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the attorney general. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the attorney general. Under such reasonable terms and conditions as the attorney general shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.
- (4) Whenever any attorney has been designated to appear on behalf of the State before any court or grand jury in any case or proceeding involving any alleged violation of this part, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the State. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.
- (5) Upon the completion of:
 - (i) the racketeering investigation for which any documentary material was produced under this part, and
 - (ii) Any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the attorney general pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.
- (6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the attorney general, to the return of all documentary material other

than copies thereof made pursuant to this subsection so produced by such person.

- (7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the attorney general shall promptly:
 - (i) designate another racketeering investigator to serve as custodian thereof, and
 - (ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the court of the State for any judicial circuit in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the court of the State for the judicial circuit within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the court of the State for the judicial circuit within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any court of the State under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

"Sec. -11 Failure to report income; penalty. Any law to the contrary notwithstanding, no person shall willfully fail to report income or to pay the taxes due thereon as provided by Chapters 235 or 237. Whoever violates this section shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, in addition to any assessment and collection of taxes, penalties and interest to which the State may be entitled under Chapters 235 and 237.

"Sec. -12 Inspection of tax records by chiefs of police. The chiefs of police of the several counties or their authorized representatives may apply to any judge for an order allowing inspection and examination of the tax returns and records on file with the department of taxation of persons suspected of willful failure to pay or report taxes, provided that such order shall issue only upon a showing of probable cause.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 72

S. B. NO. 1837-72

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Paragraph (8) of section 37-62, Hawaii Revised Statutes, is amended to read:

"(8) 'Cost elements' means the major subdivisions of a cost category. For the category 'research and development,' it includes program design and test and evaluation. For the category 'capital investment,' it includes land acquisition, design, and construction. For the category 'non-capital investment,' it includes such items as in-service training, books, etc. For the category 'operating,' it includes personal services, other current expenses, equipment, and motor vehicles."

SECTION 2. Section 37-69(a), Hawaii Revised Statutes, is amended to read:

"(a) The governor shall prepare a state six-year program and financial plan encompassing all state programs. The program and financial plan shall be annually and continually updated and maintained, and, not less than twenty days prior to the convening of each regular session, at least four copies of the current plan and such additional number of copies of the plan as the committees principally responsible for reviewing the State's finances in the re-

spective houses may designate shall be transmitted to the legislature. The program and financial plan shall, in general, contain:

- (1) The state program structure.
- (2) Statements of statewide objectives and program objectives.
- (3) Program plans which describe the programs recommended to implement the statewide and program objectives and the manner in which the recommended programs are proposed to be implemented over the next six fiscal years.
- (4) A financial plan which shows the fiscal implications of the recommended programs for the next six fiscal years."

SECTION 3. Section 37-70, Hawaii Revised Statutes, is renumbered as section 37-71, and all subsequent sections in chapter 37, part IV, Hawaii Revised Statutes, are renumbered accordingly.

SECTION 4. A new section 37-70 is added to chapter 37, part IV, Hawaii Revised Statutes, to be designated and to read as follows:

"Sec. 37-70 Summaries of six-year program and financial plan. Not less than twenty days prior to the convening of each regular session, the governor shall submit to the legislature and to each member thereof, appropriate summaries of the current six-year program and financial plan. The summaries shall include:

- (1) The state program structure.
- (2) Statements of statewide objectives.
- (3) A brief description of the economic condition of the State.
- (4) Financial displays showing:
 - (A) By resource categories and major tax sources, the previous tax and non-tax revenue projections for the last completed fiscal year and the fiscal year in progress, the variance between the projections and the actual or revised estimates, and the reasons for the variances.
 - (B) Separately for the general fund, the special fund, and the general and special funds together, the total expenditures, the total resources from existing tax and non-tax sources at existing rates, by resource categories (including the fund balance of deficit at the beginning of the fiscal year and bond receipts), and the resulting fund balance or deficit at the close of the last completed fiscal year, the fiscal year in progress, and each of the next six fiscal years. The expenditures, resources, and fund balance or deficit shall be actual for the last completed fiscal year and estimated for the fiscal year in progress and for each of the ensuing six fiscal years.
 - (C) The changes proposed to the existing tax and non-tax rates, sources, or structure, and the estimated increases or reductions in revenues, and the estimated cumulative increases or reductions, and the estimated fund balance or deficit in each of the next six fiscal years as a result of such proposed changes.
- (5) The summary specified in section 37-69(c) (7).

- (6) At the lowest level on the state program structure for each program:
 - (A) A statement of its objectives.
 - (B) The effectiveness measures; and the actual level of effectiveness attained in the last completed fiscal year and the estimated level of effectiveness for the fiscal year in progress and for each of the next six fiscal years.
 - (C) The program size indicators; and the actual size attained in the last completed fiscal year and the estimated size for the fiscal year in progress and for each of the next [six] fiscal years.
 - (D) A brief description of the activities encompassed.
 - (E) A brief summary of the narrative specified in section 37-69(d) (1) (H), highlighting particularly the program issues and the new programs or activities proposed.
 - (F) The full costs of the program, by cost categories, actually experienced in the last completed fiscal year and estimated for the fiscal year in progress and for each of the next six fiscal years. The sources of financing and the number of positions included in the costs shall be appropriately identified.
 - (G) A summary listing of capital improvement projects associated with the program. For each project, the following information shall be included:
 - (i) A description of the project and location.
 - (ii) The total amount previously appropriated by the legislature for the project by sources of funding specified in the appropriation acts.
 - (iii) The costs incurred in the last completed fiscal year and the estimated costs to be incurred in the fiscal year in progress and in each of the next six fiscal years by sources of funding.
- (7) At every level of the program structure above the lowest level:
 - (A) A statement of the objectives.
 - (B) The effectiveness measures; and the actual level of effectiveness attained in the last completed fiscal year and the estimated level of effectiveness for the fiscal year in progress and for each of the next six fiscal years.
 - (C) A brief summary of the narrative specified in section 37-69 (d) (2) (B), highlighting particularly the program issues.
 - (D) The costs of the program by cost categories and by sources of funding, actual for the last completed fiscal year, estimated for the fiscal year in progress, and estimated for each of the next six fiscal years. The number of positions included in the total cost shall be appropriately identified."

SECTION 5. Subparagraph (K) of section 37-69 (d) (1), Hawaii Revised Statutes, is amended to read:

- "(K) Details of implementation of each capital improvement project included in the total program cost, including:
 - (i) A description of the project, location, and scope;
 - (ii) The initially estimated, currently estimated and final cost of

the project, by investment cost elements and by sources of funding;

- (iii) The amounts previously appropriated by the legislature for the project, by cost elements and by sources of funding specified in the acts appropriating the sums, and an identification of the acts so appropriating;
- (iv) the costs incurred in the last completed fiscal year and the estimated costs to be incurred in the fiscal year in progress and in each of the next six fiscal years, by cost elements and subelements and by sources of funding;
- (v) a commencement and completion schedule, by month and year, of the various phases of the capital improvement project (i.e., land acquisition, design, construction and occupancy) as originally intended, as currently estimated, and as actually experienced."

SECTION 6. Section 37-70(c), Hawaii Revised Statutes, is amended to read:

"(c) The display of financial requirements for the ensuing two fiscal years shall more specifically include:

- (1) At the lowest level on the state program structure, for each program:
 - (A) The total recommended expenditures, including both capital and operating costs, by cost categories, for the ensuing biennium; the planned allocation of the total biennial request, by cost categories, between the two fiscal years of the biennium. In every instance, the source of funding and the number of positions included in any recommended expenditure amount shall be appropriately identified.
 - (B) A summary showing, by sources of funding, of the total recommended expenditures, those amounts requiring and those amounts not requiring legislative appropriation or authorization for spending in each fiscal year of the biennium.
 - (C) A crosswalk of the total proposed biennial expenditures between the program and expending agencies. The source of funding, the number of positions included in any cost amount, and the net amount requiring appropriation or authorization shall be appropriately identified for each expending agency.
 - (D) The proposed changes in the levels of expenditures, by cost categories, between the biennium in the progress and the ensuing biennium, together with a brief explanation of the major reasons for each change. The reasons may be coded and shall include, as appropriate, the following:
 - (i) Salary adjustments to existing positions of personnel.
 - (ii) The addition or deletion of positions.
 - (iii) Changes in the number of persons being served or to be served by the program.
 - (iv) Changes in the program implementation schedule.

- (v) Changes in the actual or planned level of program effectiveness.
- (vi) Increases due to the establishment of a program not previously included in the State's program structure.
- (vii) Decreases due to the phasing out of a program previously included in the State's program structure.
- (viii) Changes in the purchase price of goods or services.

As appropriate, references to the program and financial plan shall be noted for a fuller explanation of the changes. For each program, the total dollar and percentage change shall also be noted. Notwithstanding the provisions of section 10 (b) (5), the proposed changes in the levels of expenditures may be shown to the nearest thousand dollars.

- (2) Appropriate summaries of (1) (A) and (C) immediately above at every level of the state program structure above the lowest level. Such summaries shall be by the major groupings of programs encompassed within the level. The summaries of (1) (A) shall identify the sources of funding and the number of positions included in any recommended expenditure amount.
- (3) A summary listing of all capital improvement projects included in the proposed program expenditures for the ensuing biennium. The listing shall be by programs at the lowest level of the state program structure and shall show for each project, by investment cost elements:
 - (A) The cost of the project.
 - (B) The amount of non-lapsed sums and unissued bonds previously appropriated and authorized by the legislature.
 - (C) The amount of such prior non-lapsed appropriations and authorizations and the amount of new appropriations and authorizations proposed to be expended in each of the two fiscal years of the ensuing biennium and in each of the succeeding four years. The amount of the new appropriations and authorizations proposed to be expended shall constitute the proposed new requests for the project in each of the fiscal bienniums.

In every instance, the source of funds shall be noted."

SECTION 7. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Safety Glazing Materials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by amending part XII to read as follows:

"PART XII. SAFETY GLAZING OF GLASS

Sec. 321-131 Definitions. In interpreting this part, the following words shall have the following meanings:

'Safety glazing material' means any glazing material such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of American national standards institute standard Z-97.1-1966 and such further requirements as may be adopted by the department of health after notice and hearing as required by chapter 91 and which are so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

'Hazardous locations' means those installations, to be glazed or reglazed, in commercial and public buildings, known as framed or unframed glass entrance doors; and those installations, to be glazed or reglazed, in residential buildings and other structures used as dwellings, commercial buildings, and public buildings, known as sliding glass doors, storm doors, shower doors, bath tub enclosures, and fixed glazed panels greater than twelve inches in width immediately adjacent to entrance and exit doors which because of their location present a barrier in the normal path traveled by persons going into or out of these buildings, and because of their size and design may be mistaken as means of ingress or egress, and any other installation, to be glazed or reglazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the director of health may determine after notice and hearings as required by chapter 91, whether or not the glazing in such doors, panels, enclosures and other installations is transparent.

'Immediately adjacent to' means the first fixed glass panel on either side of and on the same elevation as the door itself, excluding any glass panel more than thirty inches above floor level and any transom.

Sec. 321-132 Labeling required. (a) Each light of safety glazing material installed in a hazardous location within the State shall be labeled by such means as etching, sandblasting, firing of ceramic material or by a transparent label affixed on the safety glazing material, or by other suitable means. The label shall identify the labeler, whether manufacturer, fabricator, or installer, and state that safety glazing material has been utilized in such installation. When a transparent or other than permanent label is used the label shall specify that the label shall not be removed. The label must be legible and visible after installation.

(b) Such safety glazing labeling shall not be used on other than safety glazing materials.

Sec. 321-133 Safety glazing materials required. It shall be unlawful within the State to knowingly fabricate, assemble, glaze, reglaze, install, consent or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location.

Sec. 321-134 Employees not covered. No liability under this chapter shall be created as to workmen who are employees of a contractor, subcontractor, or other employer responsible for compliance with this part.

Sec. 321-135 Penalty. Whoever violates any provision of this part shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Sec. 321-136 Local ordinances. This part shall supersede any local or county ordinance or parts thereof relating to the subject matter hereof, except where the director of the department of health approves such ordinance or parts thereof as meeting the intent of this part.

Sec. 321-137 Notices, posting requirement. Each licensed glass and glazing contractor, fabricator, and building material supply house selling glass and glazing materials shall post in a conspicuous place at each of its places of business, warning notices setting forth the requirements of this part."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval but shall not apply to glass contracts or subcontracts entered into before May 28, 1971.

(Approved May 19, 1972.)

ACT 74

S. B. NO. 1949-72

A Bill for an Act Relating to the Lapsing of Appropriations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that funds have been appropriated for certain programs, projects, and other purposes but have not been expended or a balance remains due to changes in circumstances, completion of purposes or the nonfeasibility of such undertakings. The legislature further recognizes that such funds, by law, are restricted to those purposes for which they were appropriated. In view of such a restriction, the legislature feels that such funds which were appropriated but not encumbered or expended may be put to further use. The purpose of this Act is to lapse appropriations deemed unnecessary which have not been lapsed by law.

*Edited accordingly.

SECTION 2. All unexpended and unencumbered balances as of June 30, 1972, under Act 87, Session Laws of Hawaii 1945; Act 21, Special Session Laws of Hawaii 1949; Act 274, Session Laws of Hawaii 1949; Act 300, Session Laws of Hawaii 1951; Act 234, Session Laws of Hawaii 1957; Act 186, Session Laws of Hawaii 1963; Act 123, Session Laws of Hawaii 1965; Act 197, Session Laws of Hawaii 1965; Act 203, Session Laws of Hawaii 1965; Act 216, Session Laws of Hawaii 1965; Act 132, Session Laws of Hawaii 1967; Act 133, Session Laws of Hawaii 1967; Act 198, Session Laws of Hawaii 1967; Act 263, Session Laws of Hawaii 1967; Act 2, Session Laws of Hawaii 1968; Act 31, Session Laws of Hawaii 1968; Act 2, Session Laws of Hawaii 1969; Act 115, Session Laws of Hawaii 1969; Act 279, Session Laws of Hawaii 1969; Act 3, Session Laws of Hawaii 1970; Act 153, Session Laws of Hawaii 1970; Act 191, Session Laws of Hawaii 1970; and Act 1, Session Laws of Hawaii 1971, shall lapse as of June 30, 1972.

SECTION 3. Act 201, Session Laws of Hawaii 1971, is amended to read as follows:

"SECTION 2. Any law to the contrary notwithstanding, all authorized appropriations under Act 193, Session Laws of Hawaii 1961; Act 194, Session Laws of Hawaii 1961; Act 195, Session Laws of Hawaii 1961; Act 30, Session Laws of Hawaii 1962; Act 201, Session Laws of Hawaii 1963; Act 52, Session Laws of Hawaii 1964; Act 195, Session Laws of Hawaii 1965; Act 38, Session Laws of Hawaii 1966; Act 217, Session Laws of Hawaii 1967; and Act 278, Session Laws of Hawaii 1967, which are not encumbered by December 31, 1972 shall lapse as of that date.

SECTION 3. Any law to the contrary notwithstanding, all authorized appropriations which are not encumbered shall lapse as listed herein:

- (a) Projects appropriated or authorized by Act 40, Session Laws of Hawaii 1968, which are unencumbered by December 31, 1973 shall lapse as of that date.
- (b) Projects appropriated or authorized by Act 155, Session Laws of Hawaii 1969, which are unencumbered by December 31, 1974 shall lapse as of that date.
- (c) Projects appropriated or authorized by Act 187, Session Laws of Hawaii 1970, which are unencumbered by December 31, 1975 shall lapse as of that date.

SECTION 4. Section 2 and Section 3 shall not apply to projects necessary to qualify for federal aid financing and reimbursement.

SECTION 5. All projects appropriated or authorized in Acts listed in Section 2 that are funded with cash from the general revenues of the State, which are not encumbered by June 30, 1972, shall lapse as of that date.

SECTION 6. This Act shall take effect upon its approval."

SECTION 4. If any subsection, paragraph, sentence, clause or appropriation contained in this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 75

H. B. NO. 498

A Bill for an Act Relating to the Blind.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is the policy of this State to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the State and to engage in remunerative employment. The legislature also finds that the blind, the visually handicapped, and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. The legislature declares that it is the policy of this State that the blind, the visually handicapped, and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the State, in the public schools, and in all other employment supported in whole or in part by public funds on the same term and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

SECTION 2. Section 347-13, Hawaii Revised Statutes, is hereby amended to read as follows:

"Sec. 347-13 Blind, partially blind, physically handicapped; public places; public conveyances. (a) The blind, visually handicapped, and otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(b) Every blind or visually handicapped person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places listed in subsection (a) without being required to pay an extra charge for the guide dog; provided that he shall be liable for any damage done to the premises or facilities by such dog. No such dog shall be dangerous merely because it is unmuzzled."

*Edited accordingly.

SECTION 3. Chapter 347, Hawaii Revised Statutes, is amended by adding the following new section to be appropriately designated and to read as follows:

"Sec. 347- Rights of blind; partially blind. A blind or visually handicapped person not carrying a cane or using a guide dog in any of the places, accommodations or conveyances listed in section 347-13, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or visually handicapped person to carry a cane or to use a guide dog in any such places, accommodations, or conveyances shall not constitute nor be evidence of negligence."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 76

H. B. NO. 819

A Bill for an Act Amending the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 213 of the Hawaiian Homes Commission Act, 1920, as amended, is further amended to read:

"Sec. 213 Hawaiian home-loan fund; Hawaiian home-development fund; Hawaiian home-operating fund; administration account; Hawaiian home-farm loan fund; Hawaiian home-commercial loan fund; Hawaiian home-repair loan fund; Anahola-Kekaha loan fund. (a) There are hereby established in the treasury of the State six revolving funds to be known as the Hawaiian home-loan fund, the Hawaiian home-operating fund, the Hawaiian home-farm loan fund, the Hawaiian home-commercial loan fund, the Hawaiian home-repair loan fund and the Anahola-Kekaha loan fund and two special funds to be known as the Hawaiian home-development fund and the Hawaiian home-administration account.

(b) Hawaiian home-loan fund. Thirty per cent of the state receipts derived from the leasing of cultivated sugar-cane lands under any other provisions of law or from water licenses, shall be deposited into the Hawaiian home-loan fund until the aggregate amount of the fund (including in said amount the principal of all outstanding loans and advances, and all transfers which have been made from this fund to other funds for which this fund has not been or needs not be reimbursed) shall equal \$5,000,000. In addition to these moneys, there shall be covered into the loan fund the installments of

*Edited accordingly.

principal paid by lessees upon loans made to them as provided in paragraph 2 of section 215, or as payments representing reimbursements on account of advances made pursuant to section 209 (1), but not including interest on such loans or advances. The moneys in said fund shall be available only for loans to lessees as provided for in this Act, and for the payments provided for in section 209(1), and shall not be expended for any other purpose whatsoever, except as provided in paragraphs (c) and (d) of this section.

Thirty per cent of the state receipts derived from the leasing of cultivated sugar-cane lands under any other provisions of law or from water licenses, over and above the present ceiling in the Hawaiian home-loan fund of \$5,000,000, which additional amount is hereinafter called 'Additional Receipts', shall be deposited into a special revolving account within the Hawaiian home-loan fund until the aggregate amount of the Additional Receipts so deposited (including the principal and advances made from the Additional Receipts but not from moneys borrowed under (6) hereinbelow, and all transfers which have been made from the Additional Receipts to other funds for which this fund has not been or need not be reimbursed) shall equal \$5,000,000. In addition to these moneys there shall be covered into the special revolving account of the loan fund, moneys borrowed under (6) hereinafter, installments of principal and interest paid by borrowers upon loans from the special revolving account, whether from the Additional Receipts or such borrowed moneys. To the extent as stated hereinafter, the Additional Receipts shall be repaid to the general fund of the State upon proper action by the legislature directing repayment.

Eight-five per cent of the annual Additional Receipts, hereinafter called the 'Additional Receipts—Development Fund Portion', is to be transferred to the Hawaiian home development fund, to be used in accordance with the amended provisions of subsection (c) of this section.

Fifteen per cent of the annual Additional Receipts, hereinafter called the 'Additional Receipts—Loan Fund Portion,' shall be retained in the special revolving fund and be used for and in connection with the repair or maintenance or purchase or erection or improvement of dwellings on either Hawaiian home lands or non-Hawaiian home lands, whether owned or leased, with loans by the department or by financial institutions, governmental or private. In furtherance of the purposes herein, the department may do any one or more of the following, with moneys from the Additional Receipts—Loan Fund Portion and any borrowed moneys under (6) hereinbelow:

(1) The department may extend the benefits of the special revolving account only to native Hawaiians as defined in the Act;

(2) The department may loan, or guarantee the repayment of or otherwise underwrite any authorized loan, up to a maximum of \$20,000; provided, that where, upon the death of a lessee living on Hawaiian home lands who leaves no relatives qualified to be a lessee on Hawaiian home lands, or the cancellation of a lease by the lessee, the department shall be authorized to make payment and to permit assumption of loan in excess of \$20,000 under and in accordance with the provisos of section 215(1), subject, as stated, to the provisions of section 215(3);

(3) Where the dwelling is on Hawaiian home lands, anything in the Act to the contrary notwithstanding, either the department or other governmental agencies may make loans, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, all applicable provisions of the Act, including but not limited to the provisions of sections 207, 208, 209, 210, 215, 216, and 217, and to such legislative amendments of the Act herein or hereafter enacted, provided such amendments do not change the qualifications of lessees or constitute a reduction or impairment of the Hawaiian home loan fund, Hawaiian home operating fund or Hawaiian home development fund or otherwise require the consent of the United States. Loans made to lessess by governmental agencies shall be approved by the department, and the department may assure the payment of such loans, provided that the department shall reserve the following rights, among others: the right of succession to the lessee's interest and assumption of the contract of loan; right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights necessary to protect the monetary and other interests of the department.

(4) Where the dwelling is on non-Hawaiian home lands, anything in the Act to the contrary notwithstanding, either the department or financial institutions may make loans, and in connection with such loans, the department shall be governed by, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, such terms and conditions as the department may, by rules and regulations not inconsistent with the provisions of this legislative amendment to such Act, promulgate; provided, the department shall require any loan made or guaranteed or otherwise underwritten to be secured adequately and suitably by a first or second mortgage or other securities;

(5) The department shall establish interest rate or rates at two and one-half per cent a year or higher, in connection with authorized loans on Hawaiian home lands or non-Hawaiian home lands, and where the going rate of interest on moneys borrowed by the department under (6) immediately following or loans made by financial institutions to native Hawaiians is higher, pay from the special revolving fund from either the Additional Receipts—Loan Fund Portion or the moneys borrowed, the difference in interest rates;

(6) The department may borrow and deposit into the special revolving account for the purposes of repairing or maintaining or purchasing or erecting or improving dwellings on Hawaiian home lands and non-Hawaiian home lands and related purposes as provided for in the second paragraph of (8) hereinafter, from financial institutions, governmental or private, and if necessary in connection therewith, to pledge, secure or otherwise guarantee the repayment of moneys borrowed with all or a portion of the estimated sums of Additional Receipts for the next ensuing ten years from the date of borrowing, less any portion thereof previously encumbered for similar purposes;

(7) The department may purchase or otherwise acquire, or agree so to do, before or after default, any notes and mortgages or other securities, cov-

ering loans under this program made by financial institutions, and guarantee the repayment of or otherwise underwrite, the loans, and accept the assignment of any notes and mortgages or other securities in connection therewith;

(8) The department may exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by the department with funds from the Additional Receipts—Loan Fund Portion or with funds borrowed under (6) hereinabove (but not with funds from the original \$5,000,000, unless such exercise is authorized by the Act), or in all loans by financial institutions made to Hawaiians under this program. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment or otherwise underwriting, of any loan, protecting of security interest, and after foreclosure, the repairing, renovating or modernization and sale of the property covered by the loan and mortgage, to achieve the purposes of this program while protecting the monetary and other interests of the department.

The Additional Receipts—Loan Fund Portion, less any amounts thereof utilized to pay the difference in interest rates, discounts, premiums, necessary loan processing expenses, and other expenses authorized in this legislative amendment, are subject to repayment to the general fund upon appropriate legislative action or actions directing whole or partial repayment.

(c) Hawaiian home-development fund. Twenty-five per cent of the amount of moneys covered into the Hawaiian home-loan fund annually shall be transferred into the Hawaiian home-development fund. The moneys in said development fund shall be available, with the prior written approval of the governor, for the construction of sanitary sewerage facilities, for the construction of roads through and over Hawaiian home lands, and for other nonrevenue producing improvements.

With respect to the Additional Receipts—Development Fund Portion, fifteen per cent thereof shall be used, with the prior written approval of the governor, for the construction of sanitary sewage facilities, for the construction of roads through and over Hawaiian home lands and for other non-revenue-producing improvements, and the remaining eighty-five per cent shall be segregated into a special account which may be drawn upon from time to time by the department of education, with prior written approval of the governor, for such educational projects as shall be developed and directed by the department of education after consultation with the University of Hawaii and the department of Hawaiian home lands; provided that such projects shall be directed primarily to the educational improvement of the children of lessees, the funds to be used primarily at the preschool and elementary grade levels.

Only so much of the Additional Receipts—Development Fund Portion not encumbered at the time of appropriate legislative action directing repayment, shall be repaid to the general fund of the State.

(d) Hawaiian home-operating fund. All moneys received by the department from any other source, except moneys received from the Hawaiian home-administration account, shall be deposited in a revolving fund to be known as the Hawaiian home-operating fund. The moneys in said fund shall

be available (1) for construction and reconstruction of revenue-producing improvements, including acquisition therefor of real property and interests therein, such as water rights or other interests; (2) for payment into the treasury of the State of such amounts as are necessary to meet the following charges for state bonds issued for such revenue-producing improvements, to wit, the interest on such bonds, and the principal of such serial bonds maturing the following year; (3) for operation and maintenance of such improvements, heretofore or hereafter constructed from said funds; and (4) for the purchase of water or other utilities, goods, commodities, supplies, or equipment and for services, to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands. The moneys in said fund may be supplemented by other funds available for, or appropriated by the legislature for, the same purposes. In addition to such moneys, said fund, with the approval of the governor, may be supplemented by transfers made on a loan basis from the home-loan fund. The amounts of all such transfers shall be repaid into the home-loan fund in not exceeding ten annual installments, and the aggregate amount of such transfers outstanding at any one time shall not exceed \$500,000. No projects or activities shall be undertaken hereunder except as authorized by sections 220 and 221 or the other provisions of this Act.

(e) Match moneys. The department is authorized and empowered to use moneys in the development operating funds, with the prior written approval of the governor, to match federal, state or county funds available for the same purposes and to that end is authorized to enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure and do and perform such other acts and things, as may be necessary or required, as a condition to securing match funds for such projects or works.

(f) Hawaiian home-administration account. The entire receipts derived from any leasing of the available lands defined in section 204 shall be deposited into the Hawaiian home-administration account. The moneys in said account shall be expended by the department for salaries and all other administrative expenses of the department, not including structures and other permanent improvements, subject, however, to the following conditions and requirements:

(1) The department shall, at such time as the governor may prescribe, but not later than November 15, preceding each (annual) session of the legislature, submit to the state director of finance its budget estimates of expenditures for the next ensuing (fiscal period) in the manner and form and as required by state law of state departments and establishments.

(2) The department's budget, if it meets with the approval of the governor, shall be included in the governor's budget report and shall be transmitted to the legislature for its approval.

(3) Upon approval by the legislature of the department's budget estimate of expenditures for the ensuing (fiscal period) the amount thereof shall be available to the department for the (fiscal period) and shall be expendable by the department for the expenses hereinabove provided, or, if no action on the budget is taken by the legislature prior to adjournment, the amount submitted to the legislature, but not in excess of \$200,000, shall be available for

such expenditures; any amount of money in said account in excess of the amount approved by the legislature for the (fiscal period) or so made available shall be transferred to the Hawaiian home-development fund, such transfer to be made immediately after the amount of moneys deposited in said administration account shall equal the amount approved by the legislature or so made available.

(4) The money in said administration account shall be expended by the department in accordance with state laws, rules and regulations and practices.

“(g) Hawaiian home-farm loan fund. The department shall create a fund of \$500,000 out of moneys heretofore appropriated to it by the legislature to be known as the ‘farm loan fund.’ The moneys in this fund shall be used to make loans to lessees of agricultural tracts leased under the provisions of section 207 of this Act. Such loans shall be subject to restrictions imposed by sections 214 and 215 of this Act.

“(h) Hawaiian home-commercial loan fund. The department is authorized to create a fund out of which loans may be made to those holding leases issued under Section 207 of this Act. The loans shall be for theaters, garages, service stations, markets, stores and other mercantile establishments and these shall all be owned by lessees or by organizations formed and controlled by said lessees. The loans shall be subject to the restrictions imposed by sections 214 and 215 of this Act.

“(i) Hawaiian home-repair loan fund. The department shall create a fund of \$500,000 out of moneys heretofore appropriated to it by the legislature to be known as the Hawaiian home-repair loan fund. The moneys in this fund shall be used to make loans in amounts not in excess of \$5,000 to lessees for repairs to their existing homes and for necessary additions to such homes due to increase in family size. Such loans may be made for periods not to exceed five years and shall bear interest at two and one-half per cent a year.

“(j) Anahola-Kekaha fund. The department shall create a fund of \$121,500 out of moneys heretofore appropriated to it by the legislature to be known as the Anahola-Kekaha fund. The moneys in this fund shall be used to make loans to lessees who are to be residents of Anahola and Kekaha on the island of Kauai to construct homes upon homestead lots. Such loans shall be for a period not to exceed 20 years, shall bear interest at two and one-half per cent a year and shall be for sums not to exceed \$20,000.”

SECTION 2. Section 214 of the Hawaiian Homes Commission Act, 1920, as amended, is further amended to read:

“**Sec. 214 Loans, purposes of.** The department is hereby authorized to make loans from revolving funds to the lessee of any tract, the successor to his interest therein or any agricultural cooperative association all of whose members are lessees. Such loans may be made for the following purposes:

- (1) The repair or maintenance or purchase or erection of dwellings on any tract and the undertaking of other permanent improvements thereon;
- (2) The purchase of livestock and farm equipment;
- (3) Otherwise assisting in the development of tracts and of farm and ranch operations;

(4) The cost of breaking up, planting and cultivating land and harvesting crops, the purchase of seeds, fertilizers, feeds, insecticides, medicines and chemicals for disease and pest control for animals and crops, and related supplies required for farm and ranch operations, the erection of fences and other permanent improvements for farm or ranch purposes and the expense of marketing; and

(5) To assist lessees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by lessees of the department or by organizations formed and controlled by said lessees."

SECTION 3. Section 215 of the Hawaiian Homes Commission Act, 1920, as amended, is further amended to read:

"Sec. 215 Conditions of loans. (1) Except as otherwise provided in section 213 (i), each contract of loan with the lessee or any successor or successors to his interest in the tract or with any agricultural or mercantile co-operative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan. The amount of loans at any one time to any lessee, or successor or successors in interest, of a tract of agricultural or pastoral land shall not, with respect to the provisions of the subsections (1), (2) and (3) of section 214, exceed \$25,000; to any lessee, or successor or successors in interest, of a residence lot shall not exceed \$20,000 but with respect to the provisions of subsection (4) of section 214 shall be without limit, and to any agricultural cooperative association shall be determined by the department on the basis of the proposed operations of the association and the security available; and with respect to subsection (5) of section 214 shall be determined by the department on the basis of the proposed operations of lessee(s) or the association and the security available, provided that where, upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209 (1), the amount of any such payment made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided, further, that in case of the death of a lessee, or cancellation of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to provisions of paragraph (3) of this section.

(2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semi-annual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year, payable periodically or upon demand by the de-

partment, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponement payments shall continue to bear interest at the rate of two and one-half per cent a year on the unpaid principal.

(3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to the provisions of paragraph (1) of this section. In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to the provisions of paragraph (1) of this section. The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon said loan, or postpone the payment of any installment thereon, wholly or in part, until such later date as it deems advisable. Such postponed payments shall, however, continue to bear interest at the rate of two and one-half per cent a year on the unpaid principal. Further, the department may, if it deems advisable and for the best interests of the lessees, write-off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write-off and cancellation shall be made only after an appraisal of all improvements and growing crops on the tract involved, such appraisal to be made in the manner and as provided for by section 209 (1). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to the provisions of paragraph (1) of this section.

(4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.

(5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this title, as the department may stipulate in the contract of loan.

(6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with the provisions of section 209 of this title in respect to the lease of any tract.

(7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

SECTION 4. These authorizations shall not be construed as irrevocable amendments to the Hawaiian Homes Commission Act of 1920, and any repeal

or amendment of these authorizations or any of them, and recall of moneys loaned herein shall not be construed as a present or then reduction or impairment of the funds of the Act.

SECTION 5. The provisions of these legislative amendments are declared to be severable, and if any section, sentence, clause or phrase of these legislative amendments or any of them, or the application thereof to any person or circumstances is held ineffective because there is a requirement for the consent of Congress to take effect, then, that portion only shall take effect upon the granting of consent of Congress and the effectiveness of the remainder of these legislative amendments or the application thereof shall not be affected.

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 77

H. B. NO. 1190

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-12, Hawaii Revised Statutes, is amended to read:

"Sec. 11-12. Age; place of registering. Every person who has reached the age legally required of voters for state and county elections; or who will have reached such age prior to the date of the next state or county election, and every person who has reached the age legally required of voters for federal elections, or who will have reached such age prior to the date of the next federal election, and is otherwise qualified to register may do so in the precinct in which he resides. No person shall register or vote in any other precinct than that in which he resides except as provided in section 11-21."

SECTION 2. Section 11-19, Hawaii Revised Statutes, is amended to read:

"Sec. 11-19. Registration from one county to another. Whenever any person who has registered as a voter in any county removes to and desires to register in some other county, he shall apply to the clerk of the county in which he desires to be registered. Thereupon such clerk, if the person applying is legally qualified to register, shall accept such registration and shall immediately thereafter forward to the clerk of the county in which the person was formerly registered, a notice that the name of the registered voter is to be removed from the general county register of that county. No such change of

*Edited accordingly.

registration shall be allowed after the closing of the county register for the primary election.

SECTION 3. Section 11-21, Hawaii Revised Statutes, is amended to read:

"Sec. 11-21. Change of name, transfer on election day. The county clerk may designate a registration clerk, who may be an election official, at any of the polling places in his county on the day of the election. These registration clerks shall take applications for change of name from voters who have been married or who have had their names changed since the last election. Any person whose residence has changed since the last election, and who the county clerk has not transferred under section 11-20 may apply at his old polling place on the day of the election for transfer of his registration to the precinct of his new residence. Where a person was incorrectly placed on a list of voters of a precinct in which he does not actually reside he may correct his registration. No person shall be prevented from voting at the election in the precinct in which his name appears on the voters list due to a change of name, change of registration, or other correction made under this section. However any voter registered in the wrong precinct who shall refuse to correct his registration may be challenged in accordance with law. Any person changing his name or transferring shall receive a copy of the change or transfer form."

SECTION 4. Section 11-72, Hawaii Revised Statutes, is amended to read:

"Sec. 11-72. Inspectors and clerks; submission of names and assignment; vacancies. All qualified political parties shall submit names for election inspectors and clerks to the chief election officer at least sixty days before the close of filing for any primary or special election. If any party shall fail to submit the required names by the above deadline, the chief election officer may fill such positions with available qualified persons. The chief election officer shall make a list of the inspectors and clerks by representative district at least ten days prior to such election.

"In assigning the inspectors and clerks the following criteria shall be followed:

- "(1) The inspectors and clerks shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct are not readily available to serve, they may be chosen from without the precinct so long as they reside in the representative district in which the precinct is located.
- "(2) The chief election officer may designate more inspectors and clerks than are needed in order to create a pool of qualified inspectors and clerks who may be assigned to fill vacancies or to perform such duties as needed in any precinct in their respective representative districts. If more qualified persons than are needed for a precinct desire to serve in that precinct, service shall be determined by drawing lots.
- "(3) No parent, spouse, child, or sibling of a candidate shall be eligible to serve as an inspector or clerk in any precinct in which votes may be

cast for the candidate; nor shall any candidate for any elective office be eligible to serve as an inspector or clerk in the same election in which he is a candidate. No candidate who failed of nomination in the primary election shall be eligible to serve as an inspector or clerk in the general election next following.

"(4) The chairman of the election inspectors shall be of the same party as the governor and shall be the first named inspector on the list prepared by the chief election officer. The remainder of the election inspectors and clerks shall be apportioned as follows:

"(A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices which were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for such offices: president and vice president, United States senator, United states representative, governor and lieutenant governor, state senator, state representative, and board of education.

"(B) In the event that a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the election inspectors and clerks. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subdivision (A).

"(C) In the case of the above division resulting in parties having fractional positions a whole position shall go to the party with the larger number of votes cast.

"(D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.

"In case of inability, failure, or refusal of any person so assigned to serve as an inspector or clerk the chief election officer shall, so far as reasonably practicable, appoint a person to fill the vacancy from the same party as that of the person to be replaced. In case of doubt as to the party of an inspector or clerk the chief election officer shall use first, the party membership list; then, the primary registration; then the person's word for his party affiliation."

SECTION 5. Section 11-117, Hawaii Revised Statutes, is amended to read:

"Sec. 11-117. Withdrawal of candidates; disqualification; death; notice.

Any candidate may withdraw within twenty-four hours after the close of filing for any reason and may withdraw after the close of filing up to ten days prior to an election for reasons of ill health when the notice is accompanied by a statement from a licensed physician indicating that such ill health may endanger the candidate's life, if he is a candidate for member of Congress or for state office, by giving notice in writing to the chief election officer, or if he is a candidate for a county office, by giving notice in writing to the county clerk of the county in which the candidate was seeking nomination or election.

"On receipt of the notice of withdrawal the chief election officer or the clerk shall inform the chairman of the political party of which the person

withdrawing was a candidate. When a candidate dies, withdraws or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk shall either order the candidate's name stricken from the ballot or that a notice of the disqualification, withdrawal or death be prominently posted at the polling place on election day.

"In no case shall the filing fee be refunded after filing."

SECTION 6. Section 13-2, Hawaii Revised Statutes, is amended to read:

"Sec. 13-2. Qualifications. No person shall be eligible for election or appointment to the board of education unless he is a voter of the school board district or the at-large district from which he is to be elected or appointed. No member of the board shall hold any other public office under the state or county governments. The term 'public office', for the purpose of this section, shall not include notaries public, reserve police officers, or officers of emergency organizations for civilian defense or disaster relief."

SECTION 7. Section 14-3, Hawaii Revised Statutes, is amended to read:

"Sec. 14-3. Application for presidential ballot by new resident. A person desiring to qualify under this chapter in order to vote for presidential and vice presidential electors is not required to register but on or before thirty days prior to the election, shall make an application in the form of an affidavit executed in duplicate in the presence of the clerk of the county.

"The affidavit shall contain a statement by the person containing substantially the following information:

- (1) He is a citizen of the United States;
- (2) His last residence of registration before becoming a resident of this State;
- (3) The date the person became a resident of this State;
- (4) The address at which the person now lives;
- (5) That the person shall be at least the age legally required of voters for federal elections prior to the day of the next presidential election.

The affidavit shall also contain a statement that the person has not and will not vote otherwise than by this ballot at the presidential election for which the application is being made."

SECTION 8. Section 15-2, Hawaii Revised Statutes, is amended to read:

"Sec. 15-2. Request for absentee ballot. Any person entitled to vote under this chapter, except in cases covered by section 15-12, may request an absentee ballot in person or in writing from the county clerk not more than sixty days nor less than seven days prior to the election.

"The request shall include any information which will facilitate the location of his voting precinct, the establishment of his right to a ballot, and the address to which he wishes his ballot forwarded. The request, when made for any primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary, provided

the person so indicates in his request and gives reason therefor to the satisfaction of the county clerk."

SECTION 9. Section 18-1, Hawaii Revised Statutes, is amended to read:

"Sec. 18-1. Congressional districts: reapportionment. The congressional districts and the number of members to be elected from each shall be as follows:

"First congressional district: the eighth through eighteenth representative districts and precincts one to five of the nineteenth representative district, one representative to the Congress of the United States.

"Second congressional district: the first through seventh and twentieth through twenty-fifth representative districts and precincts six and seven of the nineteenth representative district, one representative to the Congress of the United States."

SECTION 10. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 11. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 78

H. B. NO. 1664-72

A Bill for an Act Relating to Real Property Tax Exemption for Crop Shelters.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 246-33.1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 246-33.1 Crop shelters. Any other law to the contrary notwithstanding, any permanent structure constructed or installed on any taxable real property consisting of frames or supports and covered by rigid plastic, fiber glass, or other rigid and semi-rigid transparent or translucent material, and including wooden laths, used primarily for the protection of crops shall be exempted in determining and assessing the value of such taxable real property for ten years or for a period of ten years from the first day of July following commencement of construction or installation of the structure on the property for such purpose; provided that any temporary structure so constructed or installed and covered by flexible plastic or other flexible transparent or translucent material, used for such purpose, shall be so exempted not subject to the ten year limitation; provided, further, that such exemption shall continue only so long as the structure is maintained in good condition. Only structures used for commercial agricultural or horticultural purposes shall be included in the exemption.

*Edited accordingly.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 79

H. B. NO. 1757-72

A Bill for an Act Relating to Registration of Real Estate Subdivisions.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 484-20 (b), Hawaii Revised Statutes, is amended to read:

“(b) In addition to the registration fee, the applicant shall deposit with the director sufficient sums to cover the following inspection expenses:

- (1) Round trip air and ground transportation from Honolulu to site of the subdivision;
- (2) Per diem of \$30 per day for each day in which travel is required, plus one day for site inspection; and
- (3) \$75 per day for salary of state official inspecting out-of-state subdivisions.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 80

H. B. NO. 1758-72

A Bill for an Act Relating to Charges for State Mental Health Clinic Outpatient Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 334-6 (a), Hawaii Revised Statutes, is amended to read:

“(a) The director shall establish reasonable charges for outpatient professional and other personal services rendered to patients and may make collections on such charges. In making the collections on such charges the director shall take into consideration the financial circumstances of the patient and his family, and no collections shall be made where in the judgment of the director, such collections would tend to make the patient or his family a public charge or deprive the patient and his family of necessary support.”

*Edited accordingly.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 81

H. B. NO. 1814-72

A Bill for an Act Relating to the Duties of the State Commission on the Status of Women.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 367-3, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 367-3 Duties of commission. The commission shall:

- (1) Act as a central clearing house and coordinating body for governmental and non-governmental activities and information relating to the status of women;
- (2) Accumulate, compile, and publish information concerning instances of actual discrimination, and discrimination in the law, against women;
- (3) Cooperate with the department of labor and industrial relations and other state departments and agencies and appropriate federal offices and agencies in correcting unlawful employment practices, in public and private employment, involving discrimination because of sex;
- (4) Create public awareness and understanding of the responsibilities, needs, potentials, and contributions of women as homemakers, workers, and active participants in community life and of the importance of each of these roles in the changing society;
- (5) Recommend legislative and administrative action on equal treatment and opportunities for women;
- (6) Seek improvements in educational and counseling programs and policies to meet the needs of girls and women in order better to prepare them for their roles in the home and community;
- (7) Encourage a long-range program of education of women in their political rights and responsibilities, particularly with respect to their voting duties;
- (8) Maintain contacts with appropriate federal, state, local and international agencies concerned with the status of women;
- (9) Cooperate with national groups on the status of women and arrange for participation by representatives of the State in White House conferences and other national conferences from time to time;

*Edited accordingly.

- (10) Administer funds allocated for its work; be authorized to accept, disburse, and allocate funds which may become available from other governmental and private sources; provided that all such funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of such specific designation, such funds shall be disbursed or allocated on projects related to any of the purposes of this chapter; and
- (11) Submit an annual report with recommendations to the governor and the legislature."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 82

H. B. NO. 1878-72

A Bill for an Act Relating to the Compensation of Certain Persons under the Criminal Injuries Compensation Act and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following respective sums of money are hereby appropriated out of the general revenues of the State of Hawaii for the purpose of compensating the following named persons pursuant to Chapter 351, Hawaii Revised Statutes, the Criminal Injuries Compensation Act, in the amounts set out opposite their respective names:

ABRAMSON, MALLORY	\$ 75.00
Victim of assault and battery	
ADRIC, DOUGLAS S., JR.	519.68
Victim of assault and battery	
ALEJAR, BEATRIZ	126.00
Case No. 70-126	
BARRETT, SUSAN	50.00
Victim of assault and battery	
BROOKS, MARY R.	956.00
Victim of assault and battery	
CARTER, BRIAN E.	269.50
Victim of assault and battery	
CHAFFEE, DALE B.	1,287.57
Victim of assault and battery	
DELATORRE, PEDRO	167.42
Victim of aggravated assault and battery	
DICKEY, DONALD W.	130.00
Victim of assault and battery	

*Edited accordingly.

EUKER, KATHLEEN	300.00
Victim of aggravated assault and battery	
FINLEY, WILLIAM A.	75.00
Victim of assault and battery	
FITZJOHN, CLAUDINE	9,745.00
Wife of Ross Fitzjohn, victim of murder	
FUJISHIGE, MACHIYO	2,795.31
Victim of assault and battery	
GOLD, VALERIE ANNE	600.00
Victim of aggravated assault and battery	
GREER, RUTH M.	4,679.89
Victim of assault and battery	
GRIFFIE, GLENN E.	1,000.00
Victim of aggravated assault and battery	
HALL, LAVERN	232.00
Victim of assault and battery	
HICKS, LUCILLE M.	215.80
Victim of assault and battery	
HIGA, MILTON T.	2,503.49
Victim of assault and battery	
HIRANO, RICHARD S.	1,222.64
Victim of assault and battery	
HOGOBOOM, CHRISTIAN	134.00
Victim of assault and battery	
HUTCHINSON, VICTORIA N.	320.00
Case No. 70-132	
ISHIKAWA, NORMAN	2,199.66
Victim of unlawful use of explosives	
JANOUSEK, THOMAS C.	437.74
Victim of assault and battery	
KANEHOLANI, OLINDA	50.00
Victim of assault and battery	
KURASAKI, KAZUKO	10,000.00
Victim of assault and battery	
KAWAIHAE, LARRY	371.30
Victim of assault and battery	
KODAMA, CHIYOKO	4,500.28
Victim of assault and battery	
KREBSER, JAYNE	1,459.11
Victim of assault and battery	
LEE, DUANE A.	258.20
Victim of assault and battery	
LEONG, ERNEST	200.00
Victim of aggravated assault and battery	
MCKINLEY, D. N.	51.60
Victim of aggravated assault and battery	
MIYAHARA, FUMIKO	2,919.78
Victim of assault and battery	
NAKAMURA, WARREN S.	403.51
Victim of assault and battery	
NIHIPALI, HANNAH	1,791.88
Victim of manslaughter	
NOBRIGA, MANUEL Q.	428.03
Victim of aggravated assault and battery	
NUNES, CANDIDO S.	150.00
Victim of aggravated assault and battery	
NUNES, SYLVESTER	360.00
Victim of aggravated assault and battery	

OKIMURA, RALPH K.	1,634.75
Victim of aggravated assault and battery	
PAAUHAU, EBEN K.	1,406.91
Victim of assault and battery	
PANG, GEORGE W. C.	167.35
Victim of assault and battery	
PAVAO, HANNAH H.	746.80
Wife of Lenneth M. Pavao, victim of murder	
PROVANCE, TERRY ANN	681.55
Victim of assault and battery	
RAKOW, MARIE NANI	126.25
Victim of assault and battery	
RUBIN, JEFFREY	724.05
Victim of aggravated assault and battery	
SCOTT, SWAYNE F. AND FRANKIE	4,009.00
Parents of Brenda Jo Scott, a minor, Case No. 70-114	
SEKI, BETSY M.	869.59
Victim of assault and battery	
SMITH, LINDA A.	143.62
Victim of assault and battery	
STOLL, SUSAN MARIE	1,509.00
Case No. 70-109	
TAKARA, JANE C.	684.64
Victim of assault and battery	
TAKARA, RIKIMU	1,200.00
Victim of aggravated assault and battery	
TAMANAH, MATSUO	2,534.98
Victim of assault and battery	
TASHIRO, MILDRED	241.35
Victim of assault and battery	
TORRES, RICHARD ANTONE	150.00
Victim of assault and battery	
TOTOKI, NELSON K.	266.18
Victim of assault and battery	
VANNATTI, LOUIS	730.00
Victim of assault and battery	
WILLIAM, BRUCE SHARP	589.98
Victim of assault and battery	
YOSHINAGA, VIVIAN M.	172.58
Victim of assault and battery	

SECTION 2. The sums appropriated in section 1 of this Act shall be paid upon warrants issued by the comptroller of the State upon vouchers approved by the director of the department of budget and finance.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$123,876.86, or so much thereof as may be necessary, to the department of social services and housing, for the purpose of compensating the following named persons pursuant to Chapter 351, Hawaii Revised Statutes, the Criminal Injuries Compensation Act, and orders which have been issued thereunder, in the amounts set out opposite their respective names:

AKIOKA, HAVERLY E.	\$10,000.00
Victim of aggravated assault and battery (includes attorney's fee of \$50 as part of total award)	

ALONTAGA, IGNACIO, JR.	678.79
Victim of assault and battery (includes attorney's fee of \$50 as part of total award)	
ALONTAGA, IGNACIO T., SR.	660.00
Victim of assault and battery (includes attorney's fee of \$50 as part of total award)	
CHANG, EVANGELINE K.	9,745.00
Victim of assault and battery (includes attorney's fee of \$875 as part of total award)	
DACLISON, ANTONIO M.	4,559.50
Victim of aggravated assault and battery	
DRINKWATER, MARIE A.	1,486.44
Mother of Robyn A. Drinkwater, a minor, victim of aggravated assault and battery (includes attorney's fee of \$100 as part of total award)	
FABRIZIUS, RICHARD L.	10,000.00
Victim of aggravated assault and battery (includes attorney's fee of \$380 as part of total award)	
ITO, SHIZUKO	9,745.00
Dependent wife of Sunao Ito, victim of murder	
KANESHIRO, HELEN S.	9,495.00
Dependent wife of Calvin S. Kaneshiro, victim of murder, on behalf of herself and two minor children	
KAPULE, ERIKA	2,250.36
Victim of aggravated assault and battery (includes attorney's fee of \$200 as part of total award)	
KEAO, JANICE	3,808.91
Dependent wife of Darrell K. Keao, victim of murder, on behalf of herself and two minor children (includes attorney's fee of \$250 as part of total award)	
MARTIN, SUE	5,240.62
Victim of assault and battery (includes attorney's fee of \$175 as part of total award)	
MURAYAMA, GARETH	3,150.89
Victim of assault and battery (includes attorney's fee of \$175 as part of total award)	
NAGASAWA, KENNETH	108.23
Father of Ray H. Nagasawa, a minor, victim of assault and battery, of which \$75 shall be paid to the victim	
NAKOA, JAMES	10,000.00
Victim of aggravated assault and battery	
PANG, JAMES C. W.	9,745.00
Husband of Julia A. Pang, victim of murder, on behalf of himself and two minor children	
RICHARDSON, CHERYL RAE	1,195.06
Victim of aggravated assault and battery of which \$595.06 shall be paid upon receipt of evidence that hospital and doctors have been paid	
SAMPAGA, JEFFREY D.	10,000.00
Victim of assault and battery (includes attorney's fee of \$350 as part of total award)	
SCHMITT, ELISABETH	10,000.00
Dependent mother of Willi Schmitt, victim of murder	
WHITE, MATHEW M.	8,055.90
Victim of aggravated assault and battery	
WILLIS, LILLIE	1,614.66
Mother of Laurence Willis, a minor, victim of assault and battery, of which \$250 shall be paid to the victim	
ZUBER, CAROL ANN	2,337.50
Case No. 71-7 (includes attorney's fee of \$175 as part of total award)	

SECTION 4. Anything in this Act and the law, including chapter 37, to the contrary notwithstanding, the funds appropriated under section 3 of this Act which are unencumbered and unexpended at the close of any fiscal year shall not lapse and shall not be used for any other purpose.

SECTION 5. If any portion of this Act or its application to any circumstances or persons is held invalid for any reason, the remainder thereof shall not be affected thereby.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 83

H. B. NO. 1922-72

A Bill for an Act Relating to Levy and Dstraint Proceedings to Aid in Collection of Unpaid Taxes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to improve the procedural requirements of levy and dstraint; to determine what property can be levied on; the duty to surrender property under a levy; the extent of personal liability and penalty for failure to surrender property subject to dstraint or levy, and to produce books and records in aid of levy.

SECTION 2. Section 231-25 of the Hawaii Revised Statutes is amended to read as follows:

"Sec. 231-25. Payment, enforcement of by assumpsit action or by levy and dstraint upon all property and rights to property. (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

- (1) By action in assumpsit, in his own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for the amount of taxes, costs, penalties, and interest, in any district court, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant.
- (2) By levy upon all property and rights to property (except such property as is exempt under paragraph (b) (5) of this section) belonging to such taxpayer or on which there is a lien, as he may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.
- (b) The following rules are applicable to the levy as provided for in paragraph (a) (2) of this section:
 - (1) Seizure and sale of property.—The term 'levy' as used in this section includes the power of dstraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or his representative may levy upon property or rights to property, he may seize and sell

such property or rights to property (whether real or personal, tangible or intangible).

- (2) Successive seizures.—Whenever any property or right to property upon which levy has been made is not sufficient to satisfy the claim of the State for which levy is made, the director or his representative may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.
- (3) Surrender of property subject to levy.
 - (A) Requirement.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the director or his representative, surrender such property or rights (or discharge such obligation) to the director or his representative, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.
 - (B) Extent of personal liability.—Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or his representative, shall be liable in his own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of eight per cent a year from the date of such levy. Any amount (other than costs) recovered under this subparagraph shall be credited against the tax liability for the collection of which such levy was made.
 - (C) Penalty for violation.—In addition to the personal liability imposed by subparagraph (B), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to fifty per cent of the amount recoverable under subparagraph (B). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.
 - (D) Effect of honoring levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or his representative, surrenders such property or rights to property (or discharges such obligation) to the director or his representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.
 - (E) Person defined.—The term 'person,' as used in subparagraph (A), includes an officer or employee of a corporation or a mem-

ber or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

- (4) Production of books.—If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the director or his representative, exhibit such books or records to the director or his representative.
- (5) Property exempt from levy.—Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:
 - (A) Wearing apparel and school books.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family.
 - (B) Fuel, provisions, furniture, and personal effects.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value.
 - (C) Books and tools of a trade, business or profession.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value.
 - (D) Unemployment benefits.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the State.
 - (E) Undelivered mail.—Mail, addressed to any person, which has not been delivered to the addressee.
- (6) Sale of the seized property.
 - (A) Notice of sale.—The director shall take possession and keep the levied property until the sale. After taking possession, he shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time and place of the sale by publication at least once in a newspaper, published in the district, or by posting the notice in at least three public places in the district where the sale is to be held.
 - (B) Assistance in seizure and sale.—The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other

than a sheriff so retained by the director to assist him may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy.

- (C) Time and place of sale.—The sale shall take place within thirty days after seizure; provided, that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for one week. Any further extension of the sale shall be with the consent of the delinquent taxpayer. The sale shall, in any event, be completed within forty-five days after seizure of the property.
- (D) Manner and conditions of sale.—Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner.
- (E) Redemption of property.—If the owner of the property seized desires to retain or regain possession thereof, he may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs and expenses.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 84

H. B. NO. 1969-72

A Bill for an Act Relating to the Acquisition of Private Personal Property for Public Use.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 101, Hawaii Revised Statutes is amended by adding two new sections to be appropriately designated and to read:

“Sec. 101- Taking private personal property for public use. In con-

*Edited accordingly.

nection with the taking for public use of private real property used for agricultural purposes, the State or any county may take private personal property which it deems necessary or convenient which has been permanently upon or has been used in connection with the real property being taken. Just compensation must be paid for personal property so taken. Actions under and by virtue of this section, shall be commenced by filing a complaint and issuing a summons thereon. If an action is initiated for the taking of the real property, the action for the taking of the personal property must be joined to it. The complaint shall contain, with reference to the personal property sought to be condemned, a statement of the use to which the property is to be put and a description of the property and shall join as defendants all persons who are owners or claimants thereof. The procedure for the acquisition of private personal property shall, except as otherwise expressly provided in this section, be the same as in other actions brought under this chapter unless the provision by its terms is clearly inapplicable to the acquisition of personal property.

Sec. 101- Negotiated purchase of private personal property under threat of condemnation. Any law requiring governmental purchase of personal property pursuant to competitive bidding to the contrary notwithstanding, private personal property, sought to be acquired under threat of the exercise of the power of eminent domain, may be acquired through negotiated purchase."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 85

H. B. NO. 1980-72

A Bill for an Act Relating to the Sale of Personal Property in Lien Holder.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 507-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 507-23 Sale of personal property in lien holder. Notwithstanding sections 507-18 to 507-22, in the event the reasonable charges for the work done and materials furnished do not exceed \$150, the holder of any lien provided for in section 507-18 may, in lieu of obtaining judgment and execution upon the property so held by him, sell the article of personal property upon which the alterations or repairs have been made in the manner hereinafter set forth and apply the proceeds of the sale in satisfaction of the reasonable charges for the work done and materials furnished; provided, that the article has been unclaimed for at least three months. The holder of the lien shall give public

*Edited accordingly.

notice by publication in a newspaper of general circulation in the State, the publication to be not less than ten days prior to the date of sale, and shall notify the owner of the sale by sending a letter by registered mail to the last known address of the owner at least thirty days prior to the sale. The notice shall particularly describe the article to be sold, the name of the owner, the date and place of the sale, and the amount of the reasonable charges. At the time and place so published, the article may be sold and the purchaser shall succeed to the title of the owner. Out of the proceeds of the sale the holder of the lien may retain the amount of the reasonable charges, the cost of publication and other expenses incident to the sale. Any balance remaining unclaimed by the owner of the article within thirty days from the date of the sale shall be deposited with the director of finance and shall be payable to the owner of the article if claimed within one year from the date of the sale. If no claim is made for the balance within that period, the moneys so deposited shall become a government realization."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 86

H. B. NO. 1991-72

A Bill for an Act Relating to the Department of Agriculture and Amending Chapter 142, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 142, Hawaii Revised Statutes, is amended by adding sections as follows:

"Sec. 142- Enforcement; summons and citation; penalty. Any officer or employee of the department of agriculture, authorized and designated by the board of agriculture to enforce the provisions of Part I of this chapter, and all rules and regulations promulgated and adopted by the department pursuant thereto may issue a citation and summons to any person for violation of any provision of this chapter or of any rule or regulation promulgated and adopted pursuant thereto, and shall take the name and address of such person and issue to him a summons and citation, printed in the form hereinafter described, summoning him to appear at a certain place at a time within seven days of such citation, to answer the charges against him.

Sec. 142- Form of summons and citation. There shall be printed a form of summons and citation for use in citing violators of Part I of this chapter

*Edited accordingly.

and regulations promulgated pursuant thereto. The form and contents of such summons and citation shall be as adopted or prescribed by the district courts.

In every case when a summons and citation is issued the original of the same shall be given to the accused; provided that, the district courts may prescribe the issuance to the accused of a carbon copy of the summons and citation and provide for the disposition of the original and any other copies. Every summons and citation shall be consecutively numbered and each carbon copy shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

Sec. 142- Administration of oath. When a complaint is made to any prosecuting officer of the violation of the provisions of Part I of this chapter and all rules and regulations promulgated and adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to it under oath administered by another official or officials of the department of agriculture whose names have been submitted to the prosecuting officer and who have been designated by the chairman of the board of agriculture to administer the same."

SECTION 2. Section 142-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 142-12 Penalties. Any and all persons knowingly and wilfully violating any of the provisions of Part I, Chapter 142, or assisting in so doing, or who purchase, take, and carry away any animals, fodder, effects, or fittings connected therewith before the same have been discharged by the department of agriculture, or knowingly and wilfully have in possession any of the same, or impede or refuse to allow the department to perform its duty, shall be fined not more than \$500 or imprisoned not more than six months, or both."

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 87

H. B. NO. 2012-72

A Bill for an Act Relating to the Farm Loan Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 155-1, Hawaii Revised Statutes, is amended to read:

"Sec. 155-1 Definitions. Whenever used in this chapter:

"(1) 'Farm land' means land in the State used for agricultural purposes, including general farming, cane growing, fruit growing, flower growing, grazing, dairying, the production of any form of livestock or poultry, and any other form of agricultural activity. It includes land required for an adequate farm dwelling and other essential farm buildings, roads, wasteland.

- “(2) ‘Qualified farmer’ means a person of proven farming ability who operates his own farm on land owned by him in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote at least one-third of his time or derive at least one-third of his net cash income from direct participation in farming in its broadest sense. It includes Hawaii partnerships controlled to the extent of seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10. It also includes small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers.
- “(3) ‘New farmer program’ means a new farm enterprise for qualified farmers, which includes persons who are displaced from employment in an agricultural production enterprise, college graduates in agriculture, members of the Hawaii Young Farmer Association and Future Farmer of America graduates with farming projects who otherwise meet the eligibility requirements of section 155-10.
- “(4) ‘Cooperative’ means a nonprofit association of farmers organized under chapter 421.
- “(5) ‘Mortgage’ includes such classes of liens on farm land and other authorized security as are approved by the department of agriculture and the credit instruments secured thereby.
- “(6) ‘Private lender’ includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.”

SECTION 2. Section 155-8 (c), Hawaii Revised Statutes, is amended to read:

“(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. Interest on loans of classes ‘A’ through ‘C’ and class ‘E’ and class ‘F’ shall not exceed six per cent a year; provided, if the money loaned is borrowed by the department, then the interest of loans of such classes shall not exceed six per cent a year or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on class ‘D’ loans shall not exceed three per cent a year.”

SECTION 3. Section 155-9, Hawaii Revised Statutes, is amended to read:

“**Sec. 155-9 Classes of loans; purposes, terms, eligibility.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes ‘A’ through ‘F’ in the subdivisions following and shall be made only to applicants who meet the eligibility requirements specified therein and except as to class ‘B’ loans to associations and class ‘E’ loans, the eligibility requirements specified in section 155-10.

- “(1) Class A: Farm ownership and improvement loans. To provide for:
- (A) The purchase or improvement of farm land;
 - (B) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings;
 - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$100,000 and for a term not to exceed forty years. To be eligible the applicant shall (A) derive, or present an acceptable plan to derive, a major portion of his income from and devote, or intend to devote, most of his time to farming operations; (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate his farm.

- “(2) Class B: Soil and water conservation loans. To provide for:
- (A) Soil conservation practices;
 - (B) Water development, conservation, and use;
 - (C) Drainage;
 - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$35,000 to an individual or \$200,000 to an association and shall be for a term not to exceed twenty years for a loan to an individual and forty years to an association. To be eligible an individual applicant shall have sufficient farm and other income to pay for farm operating and living expenses and to meet payments on his existing debts, including the proposed soil and water conservation loan. An association, to be eligible, shall be a nonprofit organization primarily engaged in extending services directly related to the purposes of the loan to its members, and at least sixty per cent of its membership shall meet the eligibility requirements specified in section 155-10.

- “(3) Class C: Farm operating loans. To carry on and improve a farming operation, including:
- (A) The purchase of farm equipment and livestock;
 - (B) The payment of production and marketing expenses including materials, labor, and services;
 - (C) The payment of living expenses;
 - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$75,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive or present an acceptable plan to derive a major portion of his income from and devote, or intend to devote, most of his time to farming operations.

- “(4) Class D: Emergency loans. To provide relief and rehabilitation to qualified farmers without limit as to purpose:
- (A) In areas stricken by extraordinary rainstorms, windstorms,

droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;

- (B) On farms stricken by livestock disease epidemics and crop blights;
- (C) On farms seriously affected by prolonged shipping and dock strikes;
- (D) During economic emergencies caused by overproduction, excessive imports, and the like.

Such loans shall not exceed the maximum amounts and the maximum period specified in subdivisions (1) to (3) respectively, above, when the loan funds are used for the purposes specified therein.

“(5) Class E: Loans to cooperatives and corporations. To provide credit to farmers’ cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:

- (A) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$250,000 and a term not to exceed twenty years;
- (B) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$150,000 and a term not to exceed three years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations.

“(6) Class F: Loans for new farmer program. To provide for costs of a new farm enterprise for qualified farmers.

- (A) Initial loans made under this class shall be for purposes and in accordance with the terms specified in classes ‘A’ and ‘C’ only, and shall be made only for full time farming. Such loans shall be made for an amount not to exceed \$75,000 or 90 per cent of the cost of the project, whichever is the lesser.
- (B) Any subsequent loan shall be made from classes (A) to (D), respectively, depending upon the purpose for which the loan funds are used.
- (C) Borrowers must comply with such special term loan agreements as may be required by the department and shall take such special training courses as the department deems necessary.”

SECTION 4. There is appropriated out of monies in the treasury received from general obligation bond funds the sum of \$2,000,000, or so much thereof as may be necessary, to the farm loan revolving fund as provided in section 155-14, Hawaii Revised Statutes, for the purpose of this Act. The director of finance is authorized to issue general obligation bonds of the State in the amount of \$2,000,000 to be used for the purposes of this Act.

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect on July 1, 1972.

(Approved May 19, 1972.)

ACT 88

H. B. NO. 2040-72

A Bill for an Act Relating to Courts, Amending Chapters 601, 602, 603, 606, 607, and 608 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 601 of the Hawaii Revised Statutes is amended as follows:

(a) Section 601-2 is amended by deleting from the second and third lines of paragraph (2) the words "for each term of court", and inserting in lieu thereof: "for such period as he may determine".

(b) Section 601-2 is further amended by deleting from the sixth line of paragraph (2) the words "for each term of court," and inserting in lieu thereof: "for such period as he may determine."

(c) Section 601-7 is amended by deleting from the first and second lines of subsection (b) the words "whether at law, in equity, criminal, or special proceeding," and inserting in lieu thereof: "civil or criminal,".

(d) Section 601-9 is amended to read as follows:

"Sec. 601-9. Same, other instances. No attorney shall be employed, or allowed to appear before any court, in any action or proceeding which has been previously tried before him as a judge."

(e) Section 601-13 is amended by changing the period at the end of the first paragraph to a comma and adding the following: "except as otherwise provided."

(f) Section 601-14 is amended by deleting from the first and second lines the words "circuit judge, at chambers, or any other".

(g) Section 601-15 is amended by deleting from the second line the word "hereafter".

(h) Sections 601-10, 601-11, 601-12, and 601-16 are deleted.

SECTION 2. Chapter 602 of the Hawaii Revised Statutes is amended as follows:

(a) Section 602-3 is amended by deleting from the fourth line the word "to".

(b) Section 602-5 is amended to read as follows:

"Sec. 602-5. Jurisdiction and powers. The supreme court shall have jurisdiction and powers as follows:

(1) To hear and determine all questions of law, or of mixed law and

*Edited accordingly.

fact, which are properly brought before it on any appeal allowed by law from any other court or agency;

- (2) To answer, in its discretion, any question of law reserved by a circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal appellate court if the supreme court shall so provide by rule;
- (3) To entertain, in its discretion, any case submitted without suit when there is a question in difference which might be the subject of a civil action or proceeding in the supreme court, circuit court, or tax appeal court, and the parties agree upon a case containing the facts upon which the controversy depends;
- (4) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;
- (5) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;
- (6) To make or issue any order or writ necessary or appropriate in aid of its appellate or original jurisdiction, and in such case any justice may issue a writ or an order to show cause returnable before the supreme court;
- (7) To make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it."

(c) Section 602-7 is amended to read as follows:

"Sec. 602-7. Oaths, subpoenas. The supreme court may compel the attendance of witnesses and the production of books, papers, documents or tangible things, and any justice may administer oaths."

(d) Section 602-8 is amended to read as follows:

"Sec. 602-8. Terms. There shall be an annual term commencing on the first Monday in October and continuing until adjourned or until the following term begins. Continued existence, adjournment or expiration of the term shall in no way affect the power of the court to do all acts or things and to take any proceeding. The court shall be deemed always open for filing papers, issuing and returning process and making motions or orders."

(e) Section 602-9 is amended to read as follows:

"Sec. 602-9. Sessions, where. The supreme court shall sit in Honolulu; provided, that the chief justice may appoint a different place for the sitting of the court, pro tempore."

(f) Section 602-11 is amended to read as follows:

“Sec. 602-11. Full court; substitute justices. Parties shall be entitled to a hearing before a full court. In case of a vacancy, or if a justice of the supreme court is disqualified from sitting in any cause pending before the supreme court, or is unable to attend, the vacancy or the place of such justice shall be temporarily filled by a circuit judge designated by the chief justice. When necessary, the court may consist of five circuit judges, so designated.”

(g) Section 602-21 is amended to read as follows:

“Sec. 602-21. Rules. The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable “except as otherwise provided,” or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions.”

(h) Sections 602-6, 602-10, 602-12, 602-13, 602-16, 602-22, 602-23, 602-24, 602-31, 602-32, 602-33, 602-34, 602-36, and 602-37 are deleted, together with all part headings.

SECTION 3. Chapter 603 of the Hawaii Revised Statutes is amended as follows:

(a) Section 603-3 is amended by deleting the second sentence and all of the second paragraph.

(b) Section 603-4 is amended by deleting the second paragraph.

(c) The heading of Part II is changed to read “Sessions”.

(d) Sec. 603-11 is amended to read as follows:

“Sec. 603-11. Separate sessions at same time. There may be one session of the circuit court of any circuit, or separate sessions of the court at the same time, each of which may be held by one, but not more than one, of the judges of the circuit court of that circuit or any other circuit judge who may be authorized to preside in that circuit. Judgments, decrees, orders, and proceedings of any session held by any one of the judges shall be as effective as if only one session was held at a time.”

(e) Section 603-12 is amended to read as follows:

“Sec. 603-12. Sessions, held where. Except as otherwise provided by statute, the sessions of the circuit courts shall be held as follows: In the first circuit, at Honolulu; in the second circuit, at Wailuku; in the third circuit, at Hilo; in the fifth circuit, at Lihue.”

(f) Section 603-14 is amended to read as follows:

“Sec. 603-14. Place of trial; signature of judge. (a) A jury trial shall be conducted in the circuit in which the case is pending, at the place designated by section 603-12 or at such other place or places within the circuit as may be designated by the chief justice from time to time.

(b) For the trial of cases which do not require a jury the circuit court may hold sessions at any place within the circuit with the same effect as if held at the place designated by section 603-12.

(c) In any ex parte proceeding, or any other civil proceeding upon consent of all the parties who have appeared in the case, the circuit court may in its discretion, if the attendance of a jury is not required, hold sessions at which witnesses may be heard and evidence adduced and argument presented, at any place within the State without the boundaries of the circuit with the same effect as if held at the place designated by section 603-12, and for the purpose of such sessions may use the services of the clerk and reporter of the circuit court of the circuit within which the sessions are held, and may require stipulations between the parties as to the payment of costs of transportation and other special costs arising out of the fact that the sessions are held at a place other than that designated by section 603-12, as a condition of holding the sessions.

(d) Any decision, order, decree, judgment, or any other document requiring the signature of a circuit judge, in any cause or proceeding whatsoever in a circuit court, may be signed without, as well as within, the boundaries of the circuit in which the court is situated."

(g) Section 603-15 is amended to read as follows:

"Sec. 603-15. Summer trial, when. Except for reasons which may be deemed sufficient by the circuit court, the trial of a contested civil case shall not be commenced during the months of July and August unless upon consent of all parties."

(h) Section 603-16 is amended to read as follows:

"Sec. 603-16. Continuance of hearing or trial. If the judge of any circuit court, or any other circuit judge authorized to preside in the circuit, fails to attend any trial or hearing at the time appointed, a clerk thereof shall continue any case or matter then before the court for trial or hearing, from time to time, until the attendance of one of the circuit judges; but no such continuance shall be for a longer period than seven days, except as otherwise ordered by the court.

(i) A new section 603-21.5 is added, to read as follows:

"Sec. 603-21.5 General. The several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of:

- (1) Criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court;
- (2) Actions for penalties and forfeitures incurred under the laws of the State;
- (3) Civil actions and proceedings, in addition to those listed in sections 603-21.6, 603-21.7, and 603-21.8."

(j) A new section 603-21.6 is added, to read as follows:

"Sec. 603-21.6. Probate. The several circuit courts shall have power to grant probate of wills, to appoint administrators, to determine the heirs at law or devisees of deceased persons and to decree the distribution of decedents'

estates, to appoint guardians of the estates of minors and incompetents, to compel executors, administrators, and such guardians to perform their respective trusts and to account in all respects for the discharge of their official duties, and to remove any executor or administrator or any such guardian.”

(k) A new section 603-21.7 is added, to read as follows:

“Sec. 603-21.7. Non-jury cases. The several circuit courts shall have jurisdiction, without the intervention of a jury except as provided by statute, as follows:

(a) Of actions or proceedings:

- (1) For the determination and declaration of heirs of deceased persons, which jurisdiction shall be in addition to the probate jurisdiction of the court;
- (2) For the admeasurement of dower and curtesy, or the partition of real estate;
- (3) For enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate, for the foreclosure of mortgages, for the specific performance of contracts, and except when a different provision is made they shall have original and exclusive jurisdiction of all other cases in the nature of suits in equity, according to the usages and principles of courts of equity;

(b) Of actions or proceedings in or in the nature of habeas corpus, prohibition, mandamus, quo warranto, and all other proceedings in or in the nature of applications for writs directed to courts of inferior jurisdiction, to corporations and individuals, as may be necessary to the furtherance of justice and the regular execution of the law.”

(l) A new section 603-21.8 is added, to read as follows:

“Sec. 603-21.8. Appeals. The several circuit courts shall have jurisdiction of all causes that may properly come before them on any appeal allowed by law from any other court or agency.”

(m) A new section 603-21.9 is added, to read as follows:

“Sec. 603-21.9. Powers. The several circuit courts shall have power:

- (1) To make and issue all orders and writs necessary or appropriate in aid of their original or appellate jurisdiction;
- (2) To administer oaths;
- (3) To compel the attendance of parties and witnesses from any part of the State, and compel the production of books, papers, documents or tangible things;
- (4) To admit to bail persons rightfully confined in all bailable cases, or to dispense with bail as provided by the State Constitution;
- (5) To issue warrants for the apprehension, in any part of the State, of any person accused under oath of a crime or misdemeanor committed in any part of the State and to examine and commit the person to prison according to law, for trial before the circuit court of the circuit in which the offense was committed, to fix bail and generally to perform the duties of a committing magistrate;

- (6) To make and award such judgments, decrees, orders, and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to them by law or for the promotion of justice in matters pending before them.”

(n) Section 603-23 is amended to read as follows:

“Sec. 603-23. Injunction of violation of laws and ordinances. The circuit courts shall have power to enjoin or prohibit any violation of the laws of the State, or of the ordinances of the various counties, upon application of the attorney general or the various county attorneys or corporation counsels or prosecuting attorneys, even if a criminal penalty is provided for violation of the laws or ordinances. Nothing herein limits the powers elsewhere conferred on circuit courts.”

(o) Section 603-36 is amended to read as follows:

“Sec. 603-36. Actions and proceedings, where to be brought. Actions and proceedings of a civil nature within the jurisdiction of the circuit courts shall be brought as follows:

- (1) Actions described in section 603-21.5(2) shall be brought in the circuit where it is alleged the penalty or forfeiture was incurred;
- (2) Actions in the nature of ejectment or trespass quare clausum fregit or to quiet title to or partition real property shall be brought in the circuit in which the real property in question is situated; provided, that if the real property, partition of which is sought, lies in more than one circuit the action may be brought in any circuit in which the same or any part thereof is situated;
- (3) Proceedings for the probate of wills, for the appointment of administrators and trustees of the estates of deceased persons, for the administration and settlement of estates of deceased persons, shall be brought in the circuit where the deceased had his last domicile; provided, that if the deceased was last domiciled without the State, the proceedings may be brought in any circuit in which there is estate to be administered;
- (4) Proceedings for the appointment of guardians and for all matters concerning the relation of guardian and ward, shall be brought in the circuit in which the person or a majority of the persons are domiciled, in whose behalf the proceedings are begun; provided, that if the person is domiciled without the State, or a majority of the persons are so domiciled, the proceedings may be brought in any circuit in which there is estate of the person or persons;
- (5) Applications for writs directed to courts of inferior jurisdiction or for writs of quo warranto, shall be made in the circuit in which the alleged occasion for relief by any such writ arises; provided, that in case any such writ is necessary in the prosecution or furtherance of any action or proceeding already begun or pending before any circuit court, the court before which the action or proceeding has been be-

gun or is pending may issue the writ even though the alleged occasion for relief arose in another circuit;

- (6) Actions other than those specified above shall be brought in the circuit where the claim for relief arose or where the defendant is domiciled; provided, if there is more than one defendant, then the action shall be brought in the circuit in which the claim for relief arose unless a majority of the defendants are domiciled in another circuit, whereupon the action may be brought in the circuit where the majority of the defendants are domiciled."

(p) Section 603-37 is amended by inserting the word "civil" before the word "case" in the third and fifth lines, and by deleting from the ninth line the word "cause" and inserting in lieu thereof the word "case".

- (q) A new section 603-37.5 is added, to read as follows:

"Sec. 603-37.5 Cure or waiver of defects. (a) The circuit court of a circuit in which is commenced a civil case laying venue in the wrong circuit shall transfer the case, upon or without terms and conditions as the court deems proper, to any circuit in which it could have been brought, or if it is in the interest of justice dismiss the case.

(b) Nothing in sections 603-36 to 603-37.5 shall impair the jurisdiction of a circuit court of any matter involving a party who does not interpose timely and sufficient objection to the venue."

(r) The heading of Part I is changed to read "Sessions", and the heading of Part V is changed to read "Assignment to Another Circuit".

(s) Section 603-41 is amended by deleting from the seventh line the words "either at term or in chambers" together with the commas which precede and follow these words.

(t) Sections 603-7, 603-13, 603-17, 603-21, 603-22, 603-24, 603-25, 603-26, 603-27, 603-28, 603-42, and 603-46 are deleted, together with the heading of Part VI.

SECTION 4. Chapter 606 of the Hawaii Revised Statutes is amended as follows:

- (a) Section 606-1 is amended to read as follows:

"Sec. 606-1. Clerks of supreme court, circuit courts, and district courts; appointment and removal.

- (a) Subject to the provisions of chapter 76, when applicable:
- (1) There shall be a clerk of the supreme court and as many deputy clerks and assistant clerks as the business of the supreme court requires, appointed and removable by the justices of the supreme court.
- (2) There shall be as many clerks of the circuit courts as may be necessary, appointed and removable by the judge or administrative judge thereof, as the case may be. The appointment of a clerk of a particular division may be made by the judge of that division.
- (3) There shall be as many clerks of the district courts as may be necessary, appointed and removable by the judge or administrative judge thereof, as the case may be.
- (b) The respective clerks of the supreme court, circuit courts, and dis-

strict courts shall be ex-officio clerks of all the courts of records, and as such may issue process returnable in all such courts."

(b) Section 606-2 is amended to read as follows:

"Sec. 606-2. Temporary assistants. In case of the temporary absence or disability of any clerk, or when the business of any court demands, an assistant clerk, having the powers of a clerk, may be appointed for temporary duty. The salary of the assistant may be paid out of any appropriation available for the expenses of the court."

(c) Section 606-3 is amended to read as follows:

"Sec. 606-3. Seal of court, attestation. Each court of record shall have a seal, the device of which shall be as approved by the supreme court. The seal shall be in the custody of the clerk of the court, and shall be impressed upon all processes and official certificates, accompanied by the clerk's official attestation."

(d) Section 606-4 is amended to read as follows:

"Sec. 606-4. Custody; disposition of exhibits. The clerks of the supreme, circuit, and district courts shall have the custody of all records, books, papers, moneys, exhibits, and other things pertaining to their respective courts.

The clerks shall have the authority and power, upon the written approval of a judge of the court given in particular actions or proceedings, to sell, destroy, or otherwise dispose of exhibits and things marked for identification, other than original files belonging to other actions, which have come into their possession or custody under this section, when such exhibits or things have not been already returned to their owners and when more than one year has elapsed since the final termination of the action to which the exhibits or things are related; provided that the clerk shall first give notice in writing of the things that are proposed to be disposed of, stating that the same are to be disposed of if not claimed and removed from the court by a day certain, such notice to be addressed to the party or the attorney of the party who introduced the exhibits or things in evidence or left them in the custody of the court, at his last known address; and provided, further, that the clerk shall file an affidavit as to such notice and a list of the exhibits or things to be destroyed or otherwise disposed of under this section and the disposition thereof, with the action or proceeding to which the same belong.

All moneys received from sales under this section shall be forthwith deposited with the state director of finance as government realizations."

(e) Section 606-8 is amended to read as follows:

"Sec. 606-8. Powers and duties of clerks. The clerks of the courts of record may issue process, administer oaths, take depositions, and perform all other duties pertaining to their office. A clerk shall attend and record the proceedings at all sittings of courts of record.

The clerks of the circuit courts shall be ex officio masters in matters referred to them by the court."

(f) Section 606-9 is amended to read as follows:

"Sec. 606-9. Reporters and interpreters. The judge of the circuit court of each judicial circuit, or the administrative judge thereof, as the case may be,

may appoint one or more interpreters, and one or more court reporters.

The district judge of each judicial circuit, or the administrative judge, as the case may be, may appoint one or more court reporters, and one or more interpreters, as may be necessary.

Each of the interpreters and court reporters so appointed shall be removable by the judge or the administrative judge, by whom he is appointed, except as otherwise provided.

All duly appointed court reporters of the courts in the State may take depositions and administer oaths relative to the taking of the depositions.

Any one of the circuit judges or district judges may temporarily assign to any court reporter or interpreter, appointed as aforesaid, any appropriate duties in any court of the State other than the one in which he is located. In the district courts clerk reporters may be appointed having the duties, powers, and qualifications of clerks and court reporters. Nothing in this section shall prevent the employment by any one of the circuit judges or district judges aforesaid, of any court reporter, interpreter, or clerk to serve in individual cases as they may arise, when necessary."

(g) Section 606-10 is amended to read as follows:

"Sec. 606-10. Reporters, assignment. The court reporters shall be sworn officers of the court. In the circuit courts one reporter shall be assigned, for such period as may be determined, to each division of the court and be subject to the orders of the presiding judge thereof; provided, that during the sickness or absence of any reporter, a reporter of another division may be required, unless objected to by the judge to whose division he may be assigned, to perform the duties of the reporter so sick or absent."

(h) Section 606-11 is amended to read as follows:

"Sec. 606-11. Qualifications of reporters. No person shall be appointed to the position of official court reporter unless he either (1) has had three years' experience as a court reporter, or (2) has been found competent after being first examined as to his competency.

The test of competency shall be as follows: The party examined must write at the rate of at least one hundred and sixty words per minute, or at such higher rate as may be prescribed, immediately read the same back without material error, and furnish a plain and accurate transcript of the same within a reasonable time thereafter.

Nothing in this section contained shall operate as a bar to the appointment of a court reporter for not more than sixty days, or such longer period as may be approved by the chief justice, where the services of no person possessing the above required qualifications are available."

(i) Section 606-12 is amended by changing the caption to read "Duties of reporters."; by inserting in the first line after the word "each" the word "court"; by deleting from the fourth line the words "and exceptions"; by deleting from the seventh line the word "either" and inserting in lieu thereof "any"; and by amending the fifth sentence to read as follows: "other appropriate duties for the reporters to perform may be prescribed by rule of court."

(j) Section 606-12 is further amended by commencing a new paragraph with the words "Each reporter" at the beginning of the sixth sentence; by deleting the word "either" in the seventeenth line of the section and inserting in lieu thereof "any"; and by deleting the last paragraph and inserting in lieu thereof the following:

"In an ex parte or uncontested case if there is no court reporter in attendance the court may direct the clerk to take notes of the oral evidence adduced or the judge may himself take such notes or may cause the oral evidence to be preserved on tape or by another mechanical device."

(k) Section 606-13 is amended by changing the caption to read "Salary and perquisites of reporters"; by deleting the word "as" from the second line and inserting in lieu thereof "that"; by deleting from the eleventh and twelfth lines the words "attorneys or corporation counsel" and inserting in lieu thereof "or prosecuting attorneys or corporation counsels"; by deleting from the fourth line of the second paragraph the word "the" and inserting in lieu thereof "a county or prosecuting attorney or"; by deleting from the seventh line of the second paragraph the words "the director of finance of the city and"; and by inserting, preceding the last paragraph, a new paragraph to read as follows: "When a transcript is prepared from a tape, or other record of the testimony and proceedings made by a mechanical device, the transcript fees shall be those applicable when a transcript is prepared by an official court reporter from his notes. A transcript not prepared by an official court reporter shall be certified by a clerk of the court."

(l) Section 606-13 is further amended by amending the last paragraph to read as follows: "The reporter or other person preparing transcripts shall provide, at his own expense, all typewriting paper and carbon paper necessary to the preparation thereof."

(m) Section 606-14 is amended to read as follows:

"Sec. 606-14. Bailiffs. The judge of the circuit court of each judicial circuit or division may appoint a person to be known as "court officer and bailiff" or "special court officer". Each of the persons so appointed shall be removable by the judge by whom he is appointed, except as otherwise provided. In the first circuit one of the persons so appointed shall be designated as "chief court officer and bailiff," and another as "assistant chief court officer and bailiff".

The court officers and bailiffs or special court officers shall attend upon the trial of causes, keep order in the courtroom and judiciary building, serve notices and other process of the court as directed by any judge of the court, summon jurors and under the supervision of the respective courtroom clerks, have custody over juries and perform any other duties in and around the court as shall be from time to time required of them by the presiding judges or by rule of court. They shall be in attendance during all sessions of the court and perform other duties during business hours or during emergencies as may be required of them by the respective judges, absenting themselves only upon special permission from the judge presiding in the court or from the chief court officer and bailiff.

They shall receive for their services salaries as provided by law. They shall not be entitled to any fees for the service of process or for the performance of any other service, but where fees are chargeable by law for such services, such fees shall become a general governmental realization. If required to serve any notice or process they shall be entitled to reimbursement for reasonable actual expenses for transportation, to be paid out of circuit court expenses, in such sums as may be approved by a judge of the court.

In the performance of their duties they shall have the general powers of a police officer, including all of the authority, powers, and duties as set forth in chapter 708; provided, they shall not interfere with the work of the sheriff, the chiefs of police or their deputies in the service of any process for which fees are paid.

An appointee under this section who, at the time of the appointment, is a member of any pension or retirement fund provided by law shall continue as such member after the appointment with the same rights to prior and subsequent service credit as if he had remained in the service of the State or county in any former service."

(n) Sections 606-6, 606-7, and 606-15 are deleted.

SECTION 5. Chapter 607 of the Hawaii Revised Statutes is amended as follows:

(a) Section 607-2 is amended by inserting in the second line, following the comma, the words and punctuation "and subject to section 28-26," and by deleting from the next to the last line the words "a court of record" and inserting in lieu thereof "any court".

(b) Section 607-3 is amended to read as follows:

"Sec. 607-3. Court costs, waiver of prepayment, reduction or remission of. The judges of all the courts of the State shall have discretionary power to waive the prepayment of costs or to reduce or remit costs where, in special or extraordinary cases, the cost of any suit, action, or proceeding may, to the judges, appear onerous."

(c) A new section 607-3.5 is added to read as follows:

"Sec. 607-3.5. Security for costs. The several courts shall have power to require either the plaintiff or defendant, upon the application of the opposite party, to give security for costs in any civil cause, upon such terms and conditions as the court deems just."

(d) Section 607-4 is amended by deleting from the sixth line of subsection (a) the words "bond or other security drawn by the judge" and inserting in lieu thereof the following: "drawing bond or other security".

(e) Section 607-4 is further amended by amending subsection (c) to read as follows: "(c) The court, in taxing costs, may assess not only the costs of court, but also all reasonable disbursements as provided by section 607-9."

(f) Section 607-4 is further amended by deleting from the fourth line of paragraph numbered (6) of subsection (d) the words "or municipal".

(g) Section 607-5 is amended by changing the caption to read "Costs, circuit courts"; by deleting from the third line of subsection (a) the words and punctuation "original process," and the word and punctuation "information,";

by deleting from paragraph numbered (1) of subsection (a) the words and punctuation "Proceedings in law, equity," and inserting in lieu thereof: "Civil actions"; by deleting from paragraph numbered (2) of subsection (a) the words and punctuation "declaratory judgments, certiorari, mandamus, quo warranto, prohibition, habeas corpus," and inserting in lieu thereof: "quo warranto, habeas corpus, and other extraordinary writs," and by deleting from paragraph numbered (2) of subsection (a) the words "(except appeals in criminal cases)".

(h) Section 607-5 is further amended by deleting from subsection (b) the words and punctuation "cross bill or petition, cross complaint, counter-claim," and by inserting in lieu thereof the following: "cross-claim, counterclaim, third-party complaint,".

(i) Section 607-5 is further amended by deleting from the first line of paragraph numbered (1) of subsection (c) the word "Proceedings" and inserting in lieu thereof "Actions and proceedings"; by inserting in the ninth line of paragraph (1) of subsection (c), after the words "show cause" and preceding the semicolon the following: "in cases not above provided for"; and by deleting from paragraph numbered (2) of subsection (c) the word "Proceedings" and inserting in lieu thereof "Actions".

(j) Section 607-5 is further amended by deleting from the second and third lines of subsection (d) the words "(except appeals in criminal cases) where issue has been joined."

(k) Section 607-6 is amended by deleting from subsection (a) the words "bill of exceptions, or application for the issuance of writ of error", wherever the same appear, that is to say, by deleting the same from the first and second lines and from the fifth and sixth lines of subsection (a).

(l) Section 607-7 is amended to read as follows:

"Sec. 607-7. Deposit and payment of costs on appeal. All costs required to be paid upon the filing of any appeal shall be deposited with the clerk of the court from which the appeal is taken, which deposit shall be transmitted to the clerk of the appellate court together with the record of the appeal. The deposit shall be made at the time of filing the notice of appeal.

Where the appeal is from a governmental official or body other than a court, the required payment of costs for filing the appeal shall be made to the clerk of the court to which the appeal is taken except as otherwise provided."

(m) Section 607-8 is amended by deleting from the second line of the next to the last paragraph the words "other costs incurred" and inserting in lieu thereof the following: "costs incurred after judgment rendered".

(n) Section 607-9 is amended by deleting from the second line the words "the supreme court or in the circuit courts" and by inserting in lieu thereof "any court"; and by inserting in the next to the last line after the word "attorney" the words "or a party".

(o) Section 607-12 is amended by deleting from the first line the word "pay" and inserting in lieu thereof "fees", and by inserting in the second line after the word "testifying" the words and punctuation ", or subpoenaed and attending.", and by deleting from the third line "\$2" and inserting in lieu thereof "\$4", and by adding to the first paragraph:

"Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day's attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way." The second paragraph is amended to read as follows:

"The fees of witnesses may be taxed in the bill of costs as provided by Section 607-9."

(p) Section 607-13 is amended by deleting from the third and fourth lines the words and punctuation "or a nonsuit entered therein,".

(q) Section 607-14 is amended by changing the caption to read "Attorneys' fees in actions in the nature of assumpsit", and by inserting in the second line after the word "actions" and preceding the words "of assumpsit" the following: "in the nature".

Section 607-14 is further amended by deleting from the end of the first sentence "ten percent on all sums to \$100, and two and one-half percent in addition on all sums over \$100, to be computed on the excess over \$100" and inserting in lieu thereof: "a fee which the court determines to be reasonable but which shall not exceed the amount obtainable under the following schedule:

25 percent on first \$1,000 or fraction thereof.

20 percent on second \$1,000 or fraction thereof.

15 percent on third \$1,000 or fraction thereof.

10 percent on fourth \$1,000 or fraction thereof.

5 percent on fifth \$1,000 or fraction thereof.

2.5 percent on any amount in excess of \$5,000.

(r) Section 607-16 is amended by deleting from the third line the words "and fees paid", and by deleting from the third and fourth lines the words "on taking the appeal".

(s) Section 607-17 is amended by inserting in the second line after the word "action" the word "is"; by inserting in the fourth line after the word "writing", the word "which"; by inserting in the ninth line after the comma the words "not more than"; by inserting in the eleventh line after the comma the words "not more than" and by amending the proviso which commences in the thirteenth line to read as follows: "provided that the fee allowed in any of the above cases shall not exceed that which is deemed reasonable by the court."

(t) Section 607-17 is further amended by deleting the paragraph which commences in the sixteenth line.

(u) Section 607-21 is amended by deleting from the third line the words "or judge", and by deleting from the next to the last line the words and punctuation ", or a judge before whom,".

(v) Section 607-23 is amended by deleting from the caption the word and punctuation "sheriffs", by deleting from the second line the words "or judge", by deleting from the fifth line the words "to attend courts of record", and by deleting the last paragraph.

(w) Section 607-24 is amended by deleting from the seventh and eighth lines the words and punctuation "or upon an application for a writ of error, or upon exceptions,".

(x) Sections 607-10, 607-11, 607-15, and 607-22 are deleted.

SECTION 6. The amendments of section 607-5 deleting from paragraph (2) of subsection (a), and from subsection (d), the exceptions for appeals to the circuit court in criminal cases shall take effect only when the right of appeal to the circuit court in criminal cases ceases.

SECTION 7. Chapter 608 of the Hawaii Revised Statutes is amended as follows:

(a) Section 608-1 is amended by deleting from the first sentence the words "courts for dependent and delinquent children, and for institutions for their care", and inserting in lieu thereof:

"family courts and agencies thereof"

(b) Section 608-1 is further amended by deleting the last two sentences, and inserting in lieu thereof: "Except as otherwise provided, the officers and employees shall be members of the civil service system of the State and shall be chosen in conformity with Part II of chapter 76, and the compensation for and classification of the positions held by such persons shall be in accordance with Part I of chapter 77."

(c) Section 608-2, as amended by Act 188 of the Session Laws of 1970, is amended by deleting from the second sentence the words "Each of the" and inserting in lieu thereof "The".

SECTION 8. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 9. This Act upon its approval shall take effect July 1, 1973.

(Approved May 19, 1972.)

ACT 89

H. B. NO. 2041-72

A Bill for an Act Relating to Court Proceedings, Amending Chapters 632, 634, 635, 636, 641, and 655, and Repealing Chapters 631, 637, and 642 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 632 of the Hawaii Revised Statutes is amended as follows:

(a) Section 632-1 is amended by changing the period in the sixth line to a semicolon and adding: "provided, that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought."

(b) Section 632-1 is further amended by deleting from the first, tenth, and eighteenth lines of the second paragraph the words "or decree", by deleting from the first line of the second paragraph the word "all" and by deleting from the fifteenth line the words "an equitable remedy" and inserting in lieu thereof the words "a remedy equitable in nature".

(c) Section 632-1 is further amended by deleting the last sentence.

(d) Section 632-2 is amended to read as follows:

"Sec. 632-2. Appeals. Declaratory judgments may be reviewed as other judgments."

(e) Section 632-3 is amended to read as follows:

"Sec. 632-3. Further relief upon judgment. Further relief based on a declaratory judgment may be granted whenever necessary or proper, after reasonable notice and hearing, against any adverse party whose rights have been adjudicated by the judgment."

(f) Sections 632-4 and 632-5 are deleted.

SECTION 2A. Chapter 634 of the Hawaii Revised Statutes is amended as follows:

(a) Section 634-31 is amended by changing the period at the end thereof to a comma and adding the following: "except as otherwise provided."

(b) Section 634-33 is amended to read as follows:

"Sec. 634-33. Joint contractual obligations. In an action on a contract on which two or more persons are jointly, jointly and severally, or severally liable, the court in which the action is pending has jurisdiction to proceed against such of the obligors as can be served as if they were the only obligors."

(c) Section 634-34 is amended by changing the caption to read "Actions against persons by firm name", and by deleting the semicolon in the fifth line and adding the following: "or as otherwise provided by rule of court;"

(d) Section 634-56 is amended to read as follows:

"Sec. 634-56. Service of process, by whom. Except as otherwise provided, service of all process and orders shall be made by the sheriff or his deputy, the chief of police of the county in which the service is made or his duly authorized subordinate, or some other person specially appointed by the court for the purpose."

(e) Section 634-58 is amended to read as follows:

"Sec. 634-58. Return. In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff or his deputies, a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service he shall, in like manner, endorse the reason for his failure and sign this record. When service is made by a person specially appointed by the court, he shall make affidavit of such service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case he shall be notified to appear for examination."

(f) Section 634-59 is amended to read as follows:

"Sec. 634-59. Joinder of unknown persons; service when defendant unknown or absent. Where an action or proceeding involves or concerns any property, tangible or intangible, within the jurisdiction of a circuit court, or

any legal or equitable estate, right or interest, vested or contingent, in any such property, or any status or res within the jurisdiction of a circuit court:

- (1) Any person having a claim, interest or concern so as to be a necessary or proper party, who cannot be identified or whose name is unknown to the plaintiff, may be made party to the action or proceeding as provided by the rules of court.
- (2) If a defendant is unknown or does not reside within the State or cannot for any reason be served with process within the State, and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made as provided by Section 634-60 or by publication, as may be appropriate; provided, that service by publication shall not be valid unless, it is shown to the satisfaction of the court that service cannot be made as provided by Section 634-60.
- (3) Service by publication shall be made in at least one newspaper published in the State and having a general circulation in the circuit in which the action or proceeding has been instituted, in such manner and for such time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. If the action or proceeding concerns real property the court shall order additional notice by posting upon the property.
- (4) Any adjudication shall, as regards a defendant served by publication pursuant to this section, or served as provided by Section 634-60, affect only the property, status or res which is the subject of the action, unless (A) the defendant appears in the action and defends on the merits, in which case he shall be liable to a personal judgment with respect to the claim so defended, including in the case of a foreclosure action a deficiency judgment, or (B) the service is authorized by Section 634-60.5 or other provision of law, in which case he shall be liable to any judgment authorized by such law.
- (5) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law or rule of court."
- (g) Section 634-60 is amended to read as follows:

"Sec. 634-60. Service outside the State or by registered mail. In any case in which, under section 634-59, provision is made for service of summons as provided by this section, personal service shall be made upon the defendant wherever found or he shall be served by registered or certified mail with request for a return receipt, as ordered by the court. A certified copy of the order, the summons and the complaint shall be served, and the service shall be evidenced by an affidavit showing that the required papers were sent by registered or certified mail as aforesaid, and by the receipt signed by the defendant and filed with the affidavit, or in the case of personal service by the return of the serving officer or the affidavit of any other person authorized

to serve process in the place where the defendant is found or appointed by the court to make the service."

(h) A new section 634-60.5 is added, to read as follows:

"Sec. 634-60.5. Personal service on resident outside the State. Whenever a defendant, being a resident of the State, cannot be served within the State personal service may be made upon him outside the State by any person authorized to serve process in the place in which he may be found or specially appointed by the court to make the service which service shall be evidenced by the return of the serving officer or by affidavit and shall be of the same legal force and validity as if made within the State."

(i) Section 634-63 is amended to read as follows:

"Sec. 634-63. Form of published notice. The published notice provided for by section 634-59 shall be in the form of a summons, without a caption but referring to the complaint or petition, stating briefly the object of the action or proceeding with a brief description of the property involved, and calling upon the persons to whom it is addressed to plead on or before a return day stated in the notice."

(j) Section 634-66 is amended by changing the period at the end of the ninth line to a comma and adding the following: "or as otherwise provided by rule of court."

(k) Section 634-67 is amended by deleting from the fourteenth line, after the word "which", the word "if" and inserting in lieu thereof the word "is", and by adding thereto a new sentence to read as follows: "The filing shall be deemed service upon the association twenty days after the filing."

(l) Section 634-69 is amended to read as follows:

"Sec. 634-69. Service in cases of operation of motor vehicles. The use and operation by any person, whether a resident or a nonresident of the State, of any motor vehicle upon a public highway in this State is deemed equivalent to an appointment by such person of the director of regulatory agencies of the State to be his true and lawful attorney upon whom may be served the summons in any action or proceeding against him growing out of any accident or collision in which the person and the motor vehicle so used and operated may be involved. The use and operation of the motor vehicle is deemed a signification of his agreement that any such summons against him which is so served is of the same legal force and validity as if served upon him personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Service of such summons is to be made as provided by section 634-72, if the defendant cannot be found in the State.

This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply."

(m) Section 634-70 is amended to read as follows:

"Sec. 634-70. Service on boat operators. The operation, navigation, use, or maintenance by any person, whether a resident or nonresident of the State, of any boat, ship, barge, or other watercraft in the navigable waters of the

State of Hawaii is deemed equivalent to an appointment by such person of the director of regulatory agencies to be his true and lawful attorney upon whom may be served the summons in any action or proceeding against him growing out of any accident, collision, or claim for damages in which the person and the boat, ship, barge, or other watercraft may be involved in the navigable waters. The operation, navigation, use, or maintenance is deemed a signification of his agreement that any such summons against him which is so served is of the same legal force and validity as if served upon him personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Service of the summons is to be made as provided by section 634-72, if the defendant cannot be found in the State.

This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply."

(n) Section 634-71 is amended by deleting the word "his" at the end of the third line and inserting in lieu thereof the word "such", and by deleting from the next to the last line the word "rights" and inserting in lieu thereof the word "right".

Section 634-71 is further amended by amending subsection (b) thereof to read as follows: "(b) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made as provided by section 634-72, if he cannot be found in the State, with the same force and effect as though summons had been personally served within this state."

(o) A new section 634-72 is added, to read as follows:

"Sec. 634-72. Manner of service under sections 634-69 to 71. When service of summons is provided for by sections 634-69, 634-70, or 634-71, service shall be made by leaving a certified copy thereof with the director of regulatory agencies or his deputy, who shall keep a record of each such summons and the day and hour of service, provided that notice of the service and a certified copy of the summons and of the complaint are served upon the defendant personally by any person authorized to serve process in the place in which he may be found or appointed by the court for the purpose, or sent by certified or registered mail, postage prepaid, with return receipt requested, by the plaintiff or his attorney to the defendant. The plaintiff or his attorney shall file the return of the serving officer or an affidavit showing that the notice and the copy of summons and complaint were served as aforesaid or sent by certified or registered mail as aforesaid, and in the latter case the return receipt signed by the defendant shall be filed with the affidavit. The service shall be deemed complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided.

After service on the director or his deputy, if the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been

instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court."

(p) Section 634-76 is amended to read as follows:

"Sec. 634-76. Recording notice of pendency of action. In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or incumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if he claims through a party to the action; provided, that in the case of registered land, section 501-151 shall govern.

This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court."

(q) Section 634-82 is amended to read as follows:

"Sec. 634-82. Death or dissolution of plaintiff or defendant. The death of a plaintiff or defendant or the dissolution of a corporate plaintiff or defendant shall not cause an action to abate, but it may be continued upon substitution of the proper parties as provided by the rules of court, or if the claim is one which survives to or against the surviving parties the action shall proceed in favor of or against the surviving parties as provided by the rules of court."

(r) Sections 634-1 to 20, inclusive, 634-26, 634-27, 634-32, 634-41 to 48, inclusive, 634-51, 634-57, 634-61, 634-62, 634-64, 634-65, 634-81, 634-83 to 86, inclusive, and 634-91 to 98, inclusive, are deleted.

(s) The chapter heading is changed to read "Civil actions and proceedings, generally".

(t) Part headings I, II, IV, V and IX are deleted, and remaining part headings are renumbered accordingly.

SECTION 2B. Chapter 635 of the Hawaii Revised Statutes is amended as follows:

(a) Section 635-3 is amended to read as follows:

"Section 635-3. Dismissal for Want of Prosecution. The court may dismiss any action for want of prosecution after due notice to the claimants whenever claimants have failed to bring such action to trial within a period established by rule of court. Prior to dismissal of any action for want of prosecution, a court shall have adopted, promulgated, and published a rule or rules of court providing circumstances in which a claimant may seek relief from the judgment or order and such other safeguards as may be necessary."

(b) Section 635-12 is amended to read as follows:

"Sec. 635-12. No jury, when. (a) When there is no right of trial by jury, or the right has been waived, the issues shall be determined by the judge without the intervention of a jury.

(b) Whenever provision is made by statute for trial without the intervention of a jury, the same shall not be deemed to preclude trial of an issue with an advisory jury, or trial by jury by consent of the parties.

(c) Whenever provision is made by statute for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court, (1) an order of the court relieves a party from his waiver, or (2) approval of or consent to the waiver is required in a criminal case and has not been given."

(c) Section 635-13 is amended to read as follows:

"Sec. 635-13. Jury, when of right. When the right of trial by jury is given by the Constitution or a statute of the United States or this State and the right has not been waived, the case shall be tried with a jury."

(d) Section 635-14 is amended to read as follows:

"Sec. 635-14. Reference. In matters within the jurisdiction of circuit courts as set forth in sections 603-21.6 and 603-21.7, and in civil actions not within such jurisdiction if so provided by statute or rule of court, a reference to a master may be ordered."

(e) Section 635-15 is amended to read as follows:

"Sec. 635-15. Functions of court and jury. In jury trials all questions of law shall be decided by the court and all questions of fact by the jury. The court may, however, charge the jury whether there is or is not evidence, indicating the evidence, if any, tending to establish or rebut any specific fact involved in the case."

(f) Section 635-26 is amended by inserting the subsection designation "(a)" preceding the first sentence, and by adding to subsection (a) a new sentence to read: "If so directed by the court, additional jurors shall be drawn and impaneled to sit as alternate jurors."

(g) Section 635-26 is further amended by adding a new subsection (b) to read as follows: "(b) Upon the stipulation of the parties, the jury may consist of a number less than twelve."

(h) Section 635-27 is amended to read as follows:

"Sec. 635-27. Examination for cause. Each party shall have the right, under the direction of the court, to examine a proposed juror as to his qualifications, interest, or bias that would affect the trial of the cause and as to any matter that might tend to affect his verdict. Each party may introduce competent evidence to show the disqualification, interest, or bias of any juror."

(i) Section 635-28 is amended to read as follows:

"Sec. 635-28. Challenging for cause. In all cases, any party may challenge for cause any juror drawn for the trial. The court shall determine the validity of the objection urged."

(j) Section 635-29 is amended to read as follows:

"Sec. 635-29. Challenging peremptorily. (a) In addition to the challenges of jurors allowed in section 635-28, the State and defendant in criminal cases shall be allowed peremptory challenges as provided by section 635-30.

(b) In civil cases each party shall be allowed to challenge peremptorily three jurors, without assigning any reason therefor. Where there are two or more plaintiffs or two or more defendants, they may be considered as a single party for the purposes of making peremptory challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. If additional peremptory challenges are allowed to the parties on one side, the opposing party or parties may be allowed additional peremptory challenges.

(c) If an alternate juror or alternate jurors are to be impaneled, one or more additional peremptory challenges shall be allowed as provided by the rules of court."

(k) Section 635-30 is amended to read as follows:

"Sec. 635-30. Peremptory challenges, criminal cases. In criminal cases, if the offense charged is punishable by life imprisonment, each side is entitled to twelve peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed six challenges. In all other criminal trials by jury each side is entitled to three peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed two challenges. In all cases the State shall be allowed as many challenges as are allowed to all defendants."

(l) Section 635-32 is amended by deleting from the second and sixth lines, from each such line, the words and punctuation ", whether civil or criminal,".

(m) Section 635-52 is amended by deleting from the second and third lines the parenthetical phrase "(unless the court directs a non-suit, or orders a verdict)", and inserting in lieu thereof the following: "(unless the court directs a verdict, or orders entry of a judgment of acquittal)"

(n) Sections 635-1, 635-2, 635-4, 635-11, 635-16, 635-18, 635-19, 635-31, 635-41, 635-42, 635-43, 635-44, 635-51, and 635-57 are deleted.

(o) The headings of Parts I and IV, preceding sections 635-1 and 635-41, are deleted in total. The words "Part II" are deleted from the heading preceding section 635-11; the words "Part III" are deleted from the heading preceding section 635-26; the words "Part V" are deleted from the heading preceding section 635-51 and the heading is changed to read "Argument"; and the words "Part VI" are deleted from the heading preceding section 635-56.

SECTION 3. Chapter 636 of the Hawaii Revised Statutes is amended as follows:

(a) Section 636-3 is amended by changing the caption and first sentence to read as follows:

"Sec. 636-3. Judgment, lien when. Any money judgment or decree of a state court or the United States District Court for the District of Hawaii shall

be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances."

Section 636-3 is further amended by adding a paragraph to read as follows: "In the case of registered land, section 501-102 shall govern."

(b) Section 636-4 is amended to read as follows:

"Sec. 636-4. Examination of judgment debtors and others. Any creditor who has obtained a judgment in any court, or his successor in interest when that interest appears of record, may apply to the court for the issuance of orders, summons, or subpoenas, in order that the judgment debtor, and any other person having any knowledge about the affairs or property of the judgment debtor, may be examined orally before, or as directed by, a judge of the court as to any and what property the debtor owns or has an interest in and what debts are owing to him, and the court may issue such orders, summons, or subpoenas, for the examination of the judgment debtor and any other person having any knowledge about the affairs or property of the judgment debtor, and for the production of any books or documents. The examination shall be conducted in the same manner as in the case of an oral examination of witnesses. If the court finds that the judgment debtor subsequent to the entry of judgment has wilfully concealed any of his property or any interest therein the court shall tax all costs of the examination against the defendant, which shall be paid when the judgment is satisfied, in whole or in part, as a cost of execution."

(c) A new section 636-5 is added, to read as follows:

"Sec. 636-5. Action on judgment; penalty for failure to credit payments. Whenever in any action brought on a prior judgment, the complaint fails to credit prior payments on the judgment, the defendant shall be entitled to offset against the true balance due on the judgment an amount double the amount of any such credit in addition to any other penalties by law prescribed in such circumstances unless the plaintiff shall show that the existence or amount of the credit was in bona fide dispute or that the failure to set forth the credit was inadvertent or the result of an honest mistake."

(d) A new section 636-15 is added, to read as follows:

"Sec. 636-15. Default judgments. Upon application for a judgment by default:

- (1) If the taking of evidence is required or ordered and the matter is one which would have been tried before a jury had there been no default, the court shall accord a right of trial by jury unless the court in its discretion upon motion orders trial without jury on any or all issues.
- (2) If a defendant served by publication has not appeared in the action, the court shall require proof to be made of the allegations of the complaint."

(e) Sections 636-1, 636-2, 636-11, 636-12, 636-13, 636-14, and all part headings are deleted.

SECTION 4. A judgment entered in a district court on or after January 1, 1972, but no earlier district court judgment, may become a lien as provided by section 636-3.

A judgment entered in a district court on or after January 1, 1972 which, prior to the repeal of section 636-2, was docketed and recorded under section 636-2, upon the taking effect of the amendments of section 636-3 shall be deemed to have been recorded under section 636-3.

A judgment entered in a district court before January 1, 1972, may be docketed and recorded as provided in section 636-2 prior to its repeal. A lien for a judgment entered in a district court prior to January 1, 1972 may be enforced in the same manner and subject to the same requirements and limitations as if section 636-2 had not been repealed.

SECTION 5. Chapter 641 of the Hawaii Revised Statutes is amended to read as follows:

"CHAPTER 641 APPEALS

PART I. APPEALS IN CIVIL ACTIONS AND PROCEEDINGS

Sec. 641-2. Appeals as of right or interlocutory, civil matters.

(a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court, except as otherwise provided.

(b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

(c) An appeal shall be taken in the manner and within the time provided by the rules of court.

Sec. 641-4. Review on and disposition of appeal. In case of appeal to the supreme court from a judgment, order, or decree of a circuit or district court, or the land court, in a civil matter, the supreme court shall have power to review, reverse, affirm, amend, or modify such judgment, order, or decree in whole or in part, and as to any or all of the parties. It may enter an amended or modified judgment, order, or decree, or may remand the case to the trial court for the entry of the same or for other or further proceedings, as in its opinion the facts and law warrant. Any judgment, order or decree entered by the supreme court may be enforced by it or remitted for enforcement by the trial court.

Every appeal shall be taken on the record and no new evidence shall be introduced in the supreme court. The supreme court may correct any error appearing on the record, but need not consider a point which was not presented in the trial court in an appropriate manner. No judgment, order or decree shall be reversed, amended or modified for any error or defect unless the court is

of the opinion that it has injuriously affected the substantial rights of the appellant.

Sec. 641-5. Stay of proceedings to enforce a judgment.

(a) This section applies to civil cases in which the rules of court as to stay of proceedings to enforce a judgment do not apply, unless otherwise provided by statute.

(b) No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry. The court, upon good cause shown, may allow execution to issue or other appropriate action to be taken for the enforcement of the judgment within the ten-day period unless, within such time as shall be allowed by the court, a stay is obtained under subsection (c) or (d).

(c) In its discretion and on such conditions as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or other motion, or when justice so requires in other cases until such time as the court may fix.

(d) When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Notwithstanding the foregoing, there shall be no stay of an appealable order for counsel fee, suit money, temporary alimony, or other provisional order of a like nature made before final judgment in the cause, if the appellee shall give a bond in such amount and with such sureties as the court requires, conditioned for indemnification of the appellant for all damages that he may sustain by reason of the payment or performance of the order, in case the appeal shall be sustained.

(f) Within the meaning of this section "judgment" includes a decree and any order from which an appeal lies.

PART II. APPEALS IN CRIMINAL PROCEEDINGS

Sec. 641-11. From circuit courts. Any party deeming himself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court in the manner and within the time provided by the Hawaii Rules of Criminal Procedure. The sentence of the court in a criminal case shall be the judgment.

Sec. 641-11.5. From district courts. Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the supreme court, whenever the party appealing shall file notice of his appeal within thirty days, or such other time as may be provided by the rules of court.

Within a reasonable time after an appeal has been perfected from a decision of a district court to the supreme court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

It shall be the duty of the clerk of the supreme court to which an appeal has been made from the decision of any district court, within a reasonable time after the case shall have been disposed of by the court, to transmit to the district court from whose decision the appeal was made, a statement showing the disposition of the case by the supreme court.

Sec. 641-12. By State in criminal cases. An appeal may be taken by and on behalf of the State from the district or circuit courts direct to the supreme court in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or information or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or motion of that nature, where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal; provided that no appeal shall be taken by or allowed the State in any case where there has been a verdict in favor of the defendant.

Sec. 641-16. Stay in criminal cases.

(a) The filing of a notice of appeal shall operate as a stay of execution, and shall suspend the operation of any sentence or order of probation; if, however, the defendant is not admitted to bail, he may elect to commence service of sentence as provided by law. The giving of oral notice in open court at the time of sentence by the defendant or his counsel of intention to take an appeal shall likewise operate as a stay of execution of any sentence or order of probation, but such stay shall not be operative beyond the time within which an appeal may be taken.

(b) Admission to bail after the giving of oral notice in open court of intention to take an appeal or upon an appeal shall be as provided in the rules of court.

Sec. 641-18. Service. Service of a copy of the notice of appeal shall be made upon the adverse party or his attorney of record as provided by the rules of court.

Sec. 641-24. Judgment; no reversal when. The supreme court may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.

In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same, as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order,

judgment, or sentence entered by the court may be enforced by it or remitted for enforcement by the trial court.

No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. Nor shall there be a reversal in any criminal case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence or the giving of or refusing to give an instruction to the jury unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner.

Sec. 641-31. Interlocutory appeals from circuit courts, criminal matters.

Upon application made within the time provided by the rules of court, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the supreme court from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in his discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the supreme court shall not be reviewable by any other court.

Sec. 641-41. Time for appeal in case of suspended sentence. Whenever in any criminal cause an order suspending the imposition or execution of the sentence is entered by a district or circuit court, the order shall for the purposes of appeal be deemed a final judgment and the time within which to perfect any appeal in any such cause shall commence to run from the entry thereof.

PART III. GENERAL PROVISIONS

Sec. 641-43. Bonds, costs, failure to file or pay, defects. Failure of an appellant to file a bond or to pay costs, or informality or insufficiency of a bond or payment of costs, does not affect the validity of the appeal, but is ground only for such remedies as are specified by the rules of court or, when no remedy is specified, for such action as the court having jurisdiction deems appropriate, which may include dismissal of the appeal.

Sec. 641-45. Liability on bond, how enforced. By entering into a bond for costs or to stay the execution of or any proceedings to enforce a judgment, the surety submits himself to the jurisdiction of the court, irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served, and agrees that his liability may be enforced on motion without the necessity of an independent action.

The papers served on the clerk as statutory agent for the surety shall be mailed by him to the surety if his address is known."

SECTION 6. Chapter 655 of the Hawaii Revised Statutes is amended as follows:

(a) The caption of section 655-1 is changed by deleting the word "deliver" and inserting in lieu thereof "delivery".

(b) Section 655-3 is amended to read as follows:

"Sec. 655-3. Money in court, deposit as ordered by the court. Whenever any money is paid into, or deposited in any court to abide the ascertainment of the right to the money, or the termination of the action, the court shall have power, upon the application of any party interested, or without such application, to order the money to be deposited in the treasury of the State or as otherwise ordered, subject to the further order of the court."

(c) Sections 655-4 and 655-5 are deleted.

SECTION 7. Chapter 631 of the Hawaii Revised Statutes is repealed.

SECTION 8. Chapter 637 of the Hawaii Revised Statutes is repealed.

SECTION 9. Chapter 642 of the Hawaii Revised Statutes is repealed.

SECTION 10. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 11. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 19, 1972.)

ACT 90

H. B. NO. 2042-72

A Bill for an Act Relating to Remedies, Amending Chapters 654, 658, 659, 660, 664, 665, 666, 667, 668, and 669 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 654 of the Hawaii Revised Statutes is amended as follows:

(a) Section 654-21 is amended to read as follows:

"Sec. 654-21. Information required. (a) An action may be brought to secure the immediate possession of personal property in any court of competent jurisdiction by filing a verified complaint showing:

- (1) That the plaintiff is entitled to the immediate possession of the property claimed;
- (2) A particular description of the property claimed; if the property claimed is a portion of divisible property of uniform kind, quality, or value, that such is the case, and the amount thereof which the plaintiff claims;
- (3) The actual value of the property claimed;

- (4) That the property has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or an attachment against the plaintiff or his property, or if so seized that it is by statute exempt from such seizure;
- (5) That the property is in the possession of a named defendant, and the facts and circumstances relating to the possession thereof by the defendant, according to the plaintiff's best knowledge and belief;
- (6) The names of all persons other than the defendant in possession of the property, having or claiming or who might have or claim to have an interest in the property according to the best belief of plaintiff, all of whom shall be joined as defendants in the action.

(b) If the action already has been commenced, an affidavit may be filed at any time before the case is at issue, containing the information required by subsection (a)."

(b) Section 654-22 is amended to read as follows:

"Sec. 654-22. Bond. When the plaintiff desires the immediate delivery of the property, he shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that he will prosecute his action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against him. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, or his deputy, or the chief of police, or an authorized police officer of any county, to take the property therein described and deliver the same to the plaintiff.

Copies of the verified complaint or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date."

(c) Section 654-24 is amended by changing the period at the end of the section to a semicolon and adding the following: "provided that no property shall be so taken if the court issuing the order is without jurisdiction to execute process at the place at which the property is found."

(d) Section 654-25 is amended by changing the word "judge" in the fourth line to read "court".

(e) Section 654-26 is amended to read as follows:

"Sec. 654-26. Delivery. The officer, having taken possession of the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless before the actual delivery to him, the defendant who had possession, or any person claiming an interest therein and a right to the possession thereof upon making an affidavit of his interest and of his right to the possession stating the grounds thereof, executes a bond to the plaintiff in such amount and with such sureties as are approved by the court, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if the plaintiff recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. Upon the furnishing of the bond the property shall be relinquished to the defendant who had possession, unless the bond is furnished by another person who has, by proper pleadings, presented an affirmative claim to the property and has complied with the provisions of this chapter applicable to a plaintiff, in which case the court shall determine the custody of the property."

(f) Section 654-29 is amended by changing the word "part" in the third line to read "chapter".

(g) Section 654-30 is amended by changing the word "part" in the second line to read "chapter".

(h) Sections 654-1 to 654-14, and section 654-23, are deleted.

(i) The part headings are deleted and the chapter heading is changed to read "Special Proceedings for Immediate Possession of Personal Property".

SECTION 2. Chapter 658 of the Hawaii Revised Statutes is amended as follows:

(a) Section 658-1 is amended by deleting from the sixth line the words "at law or in equity".

(b) Section 658-3 is amended by deleting from the seventh line the words "by law" and by inserting in the first line of the second paragraph after the word "before" the words "or at the time of".

(c) Section 658-3 is further amended by amending the last sentence of the first paragraph to read as follows: "If the making of the agreement or the default is in issue, the court shall proceed summarily to the trial thereof."

(d) Section 658-5 is amended by deleting from the first and fourth lines the word "suit", by inserting in lieu thereof in each said line, the word "action", and by inserting in the fifth line after the word "action" the words "or proceeding".

(e) Section 658-6 is amended by deleting from the third line the words "by law".

(f) Section 658-8 is amended to read as follows:

"Sec. 658-8. Award; confirming award. The award shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and delivered to one of the parties or his attorney. A copy of the award shall be served by the arbitrators on each of the other parties to the ar-

bitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court specified in the agreement, or if none is specified, to the circuit court of the judicial circuit in which the arbitration was had, for an order confirming the award. Thereupon the court shall grant such an order, unless the award is vacated, modified, or corrected, as prescribed in sections 658-9 and 658-10. The record shall be filed with the motion as provided by section 658-13, and notice of the motion shall be served upon the adverse party, or his attorney, as prescribed for service of notice of a motion in an action in the same court."

(g) Section 658-11 is amended to read as follows:

"Sec. 658-11. Notice of motion to vacate, modify, or correct; stay. Notice of a motion to vacate, modify, or correct an award, shall be served, in the manner prescribed for service of notice of a motion in an action, upon the adverse party or his attorney within ten days after the award is made and served. For the purposes of the motion any judge who might make an order to stay the enforcement of a judgment, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. The record shall be filed with the motion as provided by section 658-13."

(h) Section 658-12 is amended to read as follows:

"Sec. 658-12. Entry of judgment. Upon the granting of an order, confirming, modifying, or correcting an award, the same shall be filed in the office of the clerk of the circuit court and this shall constitute the entry of judgment. An appeal may be taken from such judgment as hereinafter set forth."

(i) Section 658-13 is amended to read as follows:

"Sec. 658-13. Record to be filed with motion.

(a) The party moving for an order confirming, vacating, modifying, or correcting an award shall at the time the motion is filed with the clerk also file the following papers with the clerk:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award; and

(2) The award.

(b) Each notice, affidavit, or other paper, used or to be used upon an application to confirm, vacate, modify, or correct the award, and a copy of each order of the court upon such an application, shall be filed with the clerk the same as in a civil action."

(j) Section 658-14 is amended by deleting from the first line the word "so" and by inserting after the word "entered" in the first line the words "in accordance with section 658-12".

SECTION 3. Chapter 659 of the Hawaii Revised Statutes is amended as follows:

(a) Section 659-46 is amended by changing the word "judge" in the second line to "court".

(b) Section 659-47 is amended to read as follows:

"Sec. 659-47. Against corporations, by attorney general. It may also be granted upon the application of the attorney general against individuals acting as a corporation without being legally incorporated."

(c) A new section 659-47.5 is added, to read as follows:

"Sec. 659-47.5. Forfeiture of franchise. The several circuit courts shall have jurisdiction of all proceedings in, or in the nature of, quo warranto, brought by or in the name of the public utilities commission, or the state, for the forfeiture of the franchise of any corporate body offending against any law relating to such corporation, for misuser, for nonuser, for doing or committing any act or acts amounting to a surrender of its charter and for exercising rights not conferred upon it."

(d) Section 659-48 is amended by changing the word "judge" in the second line to read "court", and by changing the period at the end of the sentence to a comma, and adding "or is made by the attorney general as provided by section 659-51."

(e) Section 659-49 is amended to read as follows:

"Sec. 659-49. Answer. The person to whom the order is directed shall file his answer in writing, within the time limited by the order as determined by the court in its discretion, and state the authority under which he claims to act."

(f) Section 659-51 is amended to read as follows:

"Sec. 659-51. Judgment as to offices; burden of proof. If a person to whom an order is directed with respect to an office of which he performs the duties does not answer within the time allowed or the answer is insufficient or it is found that he has usurped the office or continues in it unlawfully, the court in addition to declaring him not qualified to fill the office and forbidding him to perform the duties of the office any longer, may direct that a new appointment be made and may grant other appropriate relief.

If the proceeding is commenced by verified petition of the attorney general and concerns a public office, the respondent shall have the burden of proof."

(g) Section 659-52 is amended to read as follows:

"Sec. 659-52. Judgment according to nature of complaint. In all cases contemplated by sections 659-46 to 659-54, judgment shall be given according to the nature of the complaint made."

(h) Section 659-53 is amended to read as follows:

"Sec. 659-53. Service. The writ or order shall be served in the same manner as is provided by the rules of court with respect to process in a civil action."

(i) A new section 659-55 is added, to read as follows:

"Sec. 659-55. Other actions. Nothing in this chapter shall preclude the obtaining of relief available by quo warranto by other appropriate action."

(j) Sections 659-1, 659-2, 659-3, 659-4, 659-5, 659-6, 659-7, 659-8, 659-9, 659-16, 659-17, 659-18, 659-19, 659-20, 659-21, 659-22, 659-23, 659-24, 659-31,

659-32, 659-33, 659-34, 659-35, 659-36, 659-37, 659-38, 659-39, 659-40, 659-50, and all part headings are deleted.

(k) The chapter heading is changed to read "Quo Warranto".

SECTION 4. The repeal or deletion of statutory provisions as to any writ shall not signify the abolition of that writ.

SECTION 5. Chapter 660 of the Hawaii Revised Statutes is amended as follows:

(a) Section 660-3 is amended to read as follows:

"Sec. 660-3. Issuable by whom. The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty; provided that persons committed or detained by order of the family court or under chapter 334 may, and if the jurisdiction of the family court is exclusive, shall, prosecute their applications in the family court."

(b) Section 660-4 is amended by deleting from the sixth line the word "suit" and inserting in lieu thereof "action", and by inserting in the ninth line after the word "issued" the words "for such purposes".

(c) Section 660-5 is amended by inserting in the first line preceding the word "order" the word "an", by deleting from the second line of paragraph numbered (1) the word "prisoner" and by inserting in lieu thereof "party", by changing the semicolon at the end of paragraph numbered (4) to a period, and by deleting from the last paragraph the numeral designation "(5)".

(d) Section 660-6 is amended by deleting from the second line the words and punctuation ", whenever a writ of habeas corpus is prosecuted as of right," and by deleting the period from the fourth line and adding the following: "or an order to show cause is issued under section 660-7."

(e) Section 660-7 is amended by deleting from the second and third lines the words and punctuation ", whenever the writ of habeas corpus is not demandable as of right," and by changing the period at the end of the section to a semicolon and adding the following: "provided, that whenever the record shows that there is a material issue of fact to be resolved by the taking of evidence the court shall order that the person detained be produced for the hearing."

(f) Section 660-12 is amended to read as follows:

"Sec. 660-12. By supreme court; to whom returnable. Whenever the writ or order to show cause is issued by the supreme court or a justice thereof, it may be made returnable before the supreme court or a circuit court."

(g) Section 660-13 is amended by deleting from the second line the word "prisoner" and inserting in lieu thereof "party".

(h) Section 660-15 is amended by deleting from the fourth line the words "of imprisonment" and inserting in lieu thereof the words "where he is imprisoned or restrained".

(i) Section 660-15 is further amended by deleting the last two sentences and inserting in lieu thereof the following:

"This section is subject to section 607-3, pursuant to which prepayment of the expense may be waived, or the sum required may be reduced or remitted."

(j) Section 660-16 is amended by inserting in the next to the last line after the word "court" the following: "designated to hear the return".

(k) Section 660-17 is amended by inserting in the third line, after the word "execution" and preceding the comma, the words "if ordered by the court", and by changing the word "thereof" in the fourth line to read "there-to".

(l) Section 660-18 is amended by deleting from the paragraph numbered (1) the words "that person" and by inserting in lieu thereof the following: "the person designated,".

(m) Section 660-20 is amended by inserting in the second line after the word "return" the following: "to a writ of habeas corpus".

(n) Section 660-21 is amended by deleting from the fourth line the words "or judge".

(o) Section 660-24 is amended by changing the word "of" in the first line to read "to", and by deleting from the second line the words and punctuation "or judge,".

(p) Section 660-25 is amended to read as follows:

"Sec. 660-25. Notice to other parties, when. If the person is detained on any process under which any other person has an interest in his detention, and the other person or his attorney is within the State and can be notified without unreasonable delay, the person detained shall not be discharged until the other person or his attorney has had an opportunity to be heard."

(q) Section 660-28 is amended to read as follows:

"Sec. 660-28. Bail, etc., before judgment. Except as otherwise provided:

(1) Until judgment is given the court may remand the party or accept bail for his appearance from day to day, or may place him under special care and custody, as circumstances may require.

(2) After judgment is given, an order made by the court under paragraph (1) shall be continued in effect during a stay of enforcement of judgment, unless the trial court, or the supreme court after taking of the appeal, shall terminate the order or make other provision in the circumstances."

(r) Section 660-30 is amended to read as follows:

"Sec. 660-30. Admitted to bail, when. If the person is detained for any cause or offense and admittance to bail is a matter of right, he shall be admitted to bail, or bail may be dispensed with as provided by the State Constitution. If the person cannot furnish the bail ordered, then he shall be remanded with an order of the court, expressing the sum in which he is held to bail and the court at which he is required to appear."

(s) Section 660-31 is amended to read as follows:

"Sec. 660-31. Bail reduced, when. If the person is committed because he cannot furnish the bail ordered, and the bail which is required appears to be excessive or unreasonable, the court shall decide what bail is reasonable, and shall order that upon furnishing such bail the person shall be discharged from custody."

(t) Section 660-32 is amended to read as follows:

"Sec. 660-32. Remanded, when. If the person is lawfully imprisoned or restrained, and is not entitled to be admitted to bail, he shall be remanded to the person or officer having lawful authority to detain him."

(u) Sections 660-1, 660-2, 660-8, 660-10, and 660-11 are deleted.

SECTION 6. Chapter 664 of the Hawaii Revised Statutes is amended as follows:

(a) Section 664-1 is amended by deleting from the third and fourth lines the words "in chambers" and inserting in lieu thereof "without a jury".

(b) Section 664-7 is amended by inserting in the third line, after the words and punctuation "those of the land adjoining," the words and punctuation "and the attorney general," and by deleting from the second sentence all that follows the words "date and place of hearing".

(c) Section 664-9 is amended by deleting from the fourth line the words "to accrue" and inserting in lieu thereof "as in other cases".

(d) Section 664-10 is amended by changing the caption to read "Powers of commissioner; procedure.", by deleting from the last line the word "judges" and inserting in lieu thereof "courts", and by adding a new sentence to read as follows: "The Hawaii Rules of Civil Procedure shall apply to proceedings under this part, except insofar as and to the extent that the rules are inconsistent with the provisions of this part."

(e) Section 664-21 is amended to read as follows:

"Sec. 664-21. Petition. Any person owning, leasing, or occupying land under an agreement with the owner or lessee, who desires to fence the land, or who, having fenced the land, desires to provide for the maintenance of the fence, may file a petition in the circuit court of the circuit in which the land is situated praying for the hearing and determination of the matter.

The petition shall designate the land by name or description, the location thereof, and the boundary or boundaries desired to be fenced or the fence desired to be maintained; and shall designate the adjoining land or lands and state the name or names of the owners, lessees, and occupants thereof. Upon the filing of the petition, summons shall issue to the adjoining owners, lessees, and occupants as in other proceedings before circuit courts."

(f) Section 664-22 is amended by deleting from the first line the word "judges" and inserting in lieu thereof "courts", and by inserting in the second line after the word "determine" a comma and the following: "without the intervention of a jury,".

(g) Section 664-23 is amended by deleting from the second, third, tenth, twenty-first, twenty-ninth, and thirty-fourth lines the word "judge" and inserting in lieu thereof in each such line the word "court".

(h) Section 664-23 is further amended by inserting in the fifth line of the last paragraph preceding the word "part" the following: "defaulting party's".

(i) Section 664-24 is amended to read as follows:

"Sec. 664-24. Pasturage in lieu of fences. In case the court finds it to be inequitable or inexpedient to establish a fence between adjoining lands, either because of the nature or situation of the lands, the shortness of the un-

expired term of a lease or agreement, the scarcity of fencing materials, or the conflicting rights of the parties; it may, if the lands are grazing lands, in lieu of fencing, decide how many animals each owner, lessee, or occupant shall be at liberty to pasture upon his land under a penalty to be specified in the decree."

(j) Section 664-25 is amended to read as follows:

"Sec. 664-25. Appeal. Any party aggrieved by the decree of the court may appeal therefrom to the supreme court in the manner and within the time provided by the rules of court."

(k) Section 664-26 is amended to read as follows:

"Sec. 664-26. Government lands. This part shall not be so construed as to allow any person owning or otherwise interested in land adjoining government land to compel the government to join in the cost of erecting or maintaining a fence on the boundary line between such lands. However, the government or any lessee or occupant of government land, with the consent of the governor, shall have the same right accorded to others to compel action according to this part by any person owning, leasing, or occupying land adjoining government land, or by any lessee or occupant of adjoining government land, and every lessee or occupant of government land shall be subject to the duties and obligations of other lessees and occupants as provided by this part."

(l) Section 664-31 is amended to read as follows:

"Sec. 664-31. Definitions. Wherever used in this part:

"Controversy" means the matter or question at issue before the court.

"Private individuals or persons" means either individuals, companies, or corporations, or any others except the State."

(m) Section 664-32 is amended to read as follows:

"Sec. 664-32. Jurisdiction. The circuit courts shall have jurisdiction to hear and determine, without the intervention of a jury, all controversies respecting rights of private way and water rights, as in this part provided."

(n) Section 664-33 is amended to read as follows:

"Sec. 664-33. Procedure; notice. The circuit courts shall hear and determine all controversies respecting rights of private way and water rights, between private individuals, or between private individuals and the State. Any person interested, or the State, may apply for the settlement of any rights involved hereunder by filing a complaint in the circuit court of the circuit in which the property affected is situated. Thereupon the court shall issue a summons to each land owner or occupant having an interest in the controversy. A notice of the pending action may be published in any case in the discretion of the court."

(o) Section 664-34 is amended to read as follows:

"Sec. 664-34. Same; decision. The court shall hear the evidence offered relative to the right in controversy, and may, if deemed desirable to the rendering of a correct decision, visit the locality where the controversy arose. It shall give such decision as may in each particular case appear to be in conformity with vested rights and shall be just and equitable between the parties.

The decision shall state expressly the findings of fact on the evidence, and shall in cases of right of way clearly indicate the location (if possible) and nature of the way; if on a water right, it shall state the proportion of time for use, and any other things necessary to the right. It may also regulate the methods by which water may be obtained, and by which its supply can be controlled. As far as possible, the rights of parties served by publication who have not appeared in the action shall be ascertained. Judgment shall be entered in accordance with the decision."

(p) Section 664-35 is amended to read as follows:

"Sec. 664-35. Costs. Costs may, in the discretion of the court, be divided, or taxed to the losing party."

(q) Section 664-36 is amended to read as follows:

"Sec. 664-36. Appeal. Any party aggrieved by the judgment of the court may appeal therefrom to the supreme court in the manner and within the time provided by the rules of court."

(r) Section 664-37 is deleted.

SECTION 7. Chapter 665 of the Hawaii Revised Statutes is amended as follows:

(a) Section 665-1 is amended by amending the second and third sentences thereof to read as follows:

"Summons shall be issued as in other actions. The attorney general shall cause the summons to be served upon any person in possession of the property, and shall also cause a copy thereof to be published once a month for three months in a newspaper of general circulation in the State."

(b) Section 665-5 is amended to read as follows:

"Sec. 665-5. Claim to proceeds. Any person claiming the proceeds of sale of escheated property may present his claim by commencing an action in the circuit court of the first circuit. Service shall be made upon the attorney general who may appear and defend on behalf of the State. If the court renders a judgment in favor of the plaintiff, the director of finance shall pay the proceeds to the plaintiff, with interest as allowed by the court, not to exceed six per cent a year."

SECTION 8. Chapter 666 of the Hawaii Revised Statutes is amended as follows:

(a) "Sec. 666-1 is amended by changing the word "determination" in the fourth line to read "termination", by changing the word "efflux" in the fifth line to read "passage", and by changing the word "any" in the sixth line to read "a".

(b) Section 666-5 is amended by inserting a comma in the second line after the word "tenant", by deleting the word "in" from the third line, and by inserting in the third line after the word "action" the words "in the nature of an action".

(c) Section 666-6 is amended to read as follows:

"Sec. 666-6. Summary possession proceedings; venue. In the case of summary possession proceedings, the person entitled to the possession of the

premises shall bring and prosecute his action in the district court of the circuit wherein the lands and premises in question are situated."

(d) Section 666-7 is amended by changing the caption to read "Jurisdiction; joinder", by deleting the word "actions" from the second line and inserting in lieu thereof "claims", and by deleting from the fourth and fifth lines the words "the possession of which is sought, and such joinder may be made".

(e) Section 666-8 is amended to read as follows:

"Sec. 666-8. Service. The summons shall be served as provided by the rules of court.

In the event that any defendant cannot be served within the circuit, service may be made in any part of the State.

If any defendant cannot be served with process within the State, and the facts shall appear by affidavit or otherwise to the satisfaction of the court, service as to such defendant may be made according to the special order of the court, but such order shall in any case include a direction to the officer to leave a certified copy of the complaint and summons with some agent or employee of mature years of the defendant, provided the agent or employee can be found upon the premises or elsewhere within the circuit, and also to affix in a conspicuous place upon the premises (as upon the wall of any store, shop, dwelling, or other building thereon, and if there is no such building, then upon some other permanent object thereon, as a tree or fence) a certified copy of the complaint and summons. The order shall further require that a certified copy of the complaint and summons be sent to the defendant by certified or registered mail, postage prepaid, unless it is shown by affidavit or otherwise to the satisfaction of the court that the address of the defendant is unknown and cannot be ascertained."

(f) Section 666-11 is amended to read as follows:

"Sec. 666-11. Judgment; writ of possession. If it is proved to the satisfaction of the court that the plaintiff is entitled to the possession of the premises, he shall have judgment for possession, and for his costs. Execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding him to remove all persons from the premises, and to put the plaintiff, or his agent, into the full possession thereof."

(g) Section 666-14 is amended by changing the caption to read "Writ stayed how, in proceedings for non payment of rent.", and by deleting from the sixth, seventh and eighth lines the words and punctuation "; or gives such security for the payment thereof, within five days, as is satisfactory to the judge or to the plaintiff".

(h) Sections 666-10, 666-15, 666-16, 666-17, 666-18, and 666-19 are deleted.

SECTION 9. Chapter 667 of the Hawaii Revised Statutes is amended as follows:

(a) Section 667-1 is amended to read as follows:

"Sec. 667-1. Foreclosure by action. The circuit court may assess the amount due upon a mortgage, whether of real or personal property, without

the intervention of a jury, and shall render judgment for the amount awarded, and the foreclosure of the mortgage. Execution may be issued on the judgment, as ordered by the court."

(b) Section 667-2 is amended to read as follows:

"Sec. 667-2. Other mortgages joined. All prior and subsequent mortgage creditors, whose names are or can be discovered by the party foreclosing a mortgage, shall be made parties to the action."

(c) Section 667-3 is amended by deleting from the third line the word "decrees" and inserting in lieu thereof "judgments", and by changing the word "enforcing" in the fourth line to read "forcing".

(d) Section 667-4 is amended to read as follows:

"Sec. 667-4. Defenses. The mortgagor, or any subsequent mortgagee, may defend the action for foreclosure, and may show any matter in legal or equitable avoidance of the mortgage."

(e) Section 667-5 is amended to read as follows:

"Sec. 667-5. Foreclosure under power of sale; notice; affidavit after sale. When a power of sale is contained in a mortgage, the mortgagee, or his successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of his intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. A copy of the notice shall be posted on the premises not less than twenty-one days before the day of sale.

Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on his behalf. He shall, within thirty days after selling the property in pursuance of the power, file a copy of the notice of sale and his affidavit, setting forth his acts in the premises fully and particularly, in the bureau of conveyances.

The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

This section is inapplicable if the mortgagee is foreclosing as to personal property only."

(f) Section 667-6 is amended to read as follows:

"Sec. 667-6. Notice to mortgage creditors. Whenever a mortgage creditor having a mortgage lien on certain premises desires notice that another mortgage creditor having a mortgage lien on the same premises intends to foreclose the mortgage and sell the mortgaged property pursuant to a power of sale under section 667-5, he may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee's intention to foreclose the mortgage under power of sale. This request for notice may be submitted any time after the recorda-

tion or filing of the subject mortgage at the bureau of conveyances or the land court, but must be submitted prior to the completion of the publication of the mortgagee's notice of intention to foreclose the mortgage and of the sale of the mortgaged property. This request shall be signed by the mortgage creditor, or its authorized representative, desiring to receive notice, specifying the name and address of the person to whom the notice is to be mailed. The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors, not less than seven calendar days prior to the date of sale.

No request for copy of any notice pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to real property or be deemed notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the property described in the mortgage referred to therein."

(g) Section 667-8 is amended to read as follows:

"Sec. 667-8. Affidavit as evidence, when. If it appears by the affidavit that the affiant has in all respects complied with the requirements of the power of sale and the statute, in relation to all things to be done by him before selling the property, and has sold the same in the manner required by the power, the affidavit, or a duly certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed."

(h) Section 667-9 is amended to read as follows:

"Sec. 667-9. Dower barred, when. If the mortgage was executed by a man having at the time no lawful wife, or if the mortgagor being married, his wife joined in the deed in token of her release of dower, the sale of the property in the mode aforesaid shall be effectual to bar all claim and possibility of dower in the property."

(i) Section 667-10 is amended by changing the period at the end of the first sentence to a comma and adding the following: "except as otherwise provided by chapters 501 and 502."

(j) Section 667-10 is further amended by inserting after the word "remainder" in the sixth line, preceding the comma, the words "of the proceeds".

(k) Sections 667-11, 667-12, and 667-13, are deleted.

SECTION 10. The repeal of sections 667-11, 667-12, and 667-13, and any amendments of sections 501-118, 502-33, and 667-6 of the Hawaii Revised Statutes, related thereto, shall not affect any entry made or other action taken thereunder before the time when the repeal and amendments take effect, or any duty to give notice thereof, and in case of such entry or other action all persons concerned shall have the same right to act further in the premises, including the right of redemption, as if such repeal and amendments had not taken effect.

SECTION 11. Chapter 668 of the Hawaii Revised Statutes is amended as follows:

(a) Section 668-1 is amended to read as follows:

"Sec. 668-1. Actions for partition. When two or more persons hold or are in possession of real property as joint tenants or as tenants in common, in which one or more of them have an estate in fee, or a life estate in possession, any one or more of such persons may bring an action in the circuit court of the circuit in which the property or some part thereof is situated, for a partition of the property, according to the respective rights of the parties interested therein, and for a sale of the same or a part thereof if it appears that a partition cannot be made without great prejudice to the owners. The several circuit courts shall have power, in any action for partition, to proceed according to the usual practice of courts of equity in cases of partition, and according to this chapter in enlargement thereof."

(b) Section 668-2 is amended to read as follows:

"Sec. 668-2. Necessary parties; unknown owners. Subject to the rules of court and section 668-8.5, plaintiff shall join as a party every person having or claiming to have, as far as known to him, any legal or equitable right, title, or interest in the property described in the complaint or any part thereof or any lien or other claim with respect thereto. Such persons shall be named in the complaint as far as known to the plaintiff.

All persons interested or who may claim any interest in the premises who cannot be identified or whose names are unknown to the plaintiff, shall be made parties as provided by the rules of court."

(c) Section 668-3 is amended to read as follows:

"Sec. 668-3. Complaint. The complaint shall particularly describe the property sought to be partitioned, and shall set forth the title and rights of all parties interested therein and the extent of their respective interests, as far as known to the plaintiff. In case any person or persons interested are unknown to the plaintiff so that they cannot be named, or if the plaintiff does not know the share or quantity of interest of any party, or if any share or interest is uncertain or contingent or dependent upon some executory devise or provision, so that the same cannot be stated by the plaintiff, the facts shall be stated in the complaint and, if required by the rules of court, a supporting affidavit shall be furnished."

(d) Section 668-4 is amended to read as follows:

"Sec. 668-4. Pleadings; substitution of heirs in case of death. Each party shall allege the source or derivation and devolution of his title, right, interest, or claim. The answers of the defendants shall state, among other things, the precise nature and extent of their respective interests or claims.

If any suggestion of death of any party is made to the court, the court shall upon ascertainment of the identity of the heirs or devisees of the decedent, order them joined as parties as provided by the rules of court."

(e) Section 668-5 is amended to read as follows:

"Sec. 668-5. Summons, service. The summons shall be directed to all persons named in the complaint or joined as provided by the rules of court, and may be directed generally to all persons unknown having or claiming to have any interest in the premises described in the complaint, subject to section 668-8.5. Unknown persons and any known persons who do not reside within

the State or cannot for any reason be served with process within the State, shall have notice of the action as provided by sections 634-59, 634-60, and 634-63. If the summons has been directed generally to all persons unknown as above provided, and if service has been made upon persons known and unknown as required, the court shall have jurisdiction to proceed as though all persons interested in the premises were in being and personally served, but any adjudication shall, as regards a defendant served as provided by sections 634-59, 634-60, and 634-63, affect only the property which is the subject of the action except as provided by section 634-59."

(f) Section 668-7 is amended by deleting the first line and inserting in lieu thereof:

"Sec. 668-7. Powers of the court. The court shall have power, subject to section 668-8.5:"

(g) Section 668-7 is further amended by amending paragraph (3) thereof to read as follows:

"(3) To vest titles by judgments, without the form or necessity of conveyance by minors or unknown or absent owners;"

(h) Section 668-7 is further amended by deleting from the fifth line of paragraph (6) thereof the words "decree or decrees" and inserting in lieu thereof "judgment or judgments".

(i) Section 668-7 is amended by adding a new paragraph (7), to read as follows:

"(7) To exercise any other power pertaining to a circuit court in a civil action."

(j) The last paragraph of section 668-7 is amended to read as follows:

"When partition of two or more separate tracts or parcels of land is sought, the whole share of any party in all of them may be set apart to him in any one or more of the tracts or parcels. Any plan for a subdivision shall, before approval of the court, be subject to approval by the planning department of any county having laws and regulations covering subdivisions, applicable thereto. If action by the planning department on the proposed subdivision is unreasonably delayed, the court may order the planning department to appear and show cause why the subdivision should not be approved by the court."

(k) Section 668-8 is amended by deleting the portion of the first sentence preceding the proviso in the eleventh line, and inserting in lieu thereof: "Whenever the legal title of any particular share or interest in the property is controverted, the issue shall be triable of right by a jury;"

(l) A new section 668-8.5 is added, to read as follows:

"Sec. 668-8.5. Adverse claimants. Unless the action is combined with an action under chapter 669, a person who has not appeared and who claims to hold by title paramount to that under which the plaintiff claims as a co-tenant shall not be concluded by the judgment, but may maintain an action asserting his title against any or all of the parties, or persons holding under them, within the time in which he might have brought such action if the action for partition had not been filed."

(m) Section 668-9 is amended to read as follows:

"Sec. 668-9. Unknown and absent owners. The court shall in all cases provide for the protection of the interests of all unknown owners and other owners served under sections 634-59 or 634-60 who do not appear in the action, in the same manner as far as may be as if they were known and had appeared in the action. In every case their rights must appear to the satisfaction of the court, but the court may consider them together in the action without considering them separately. The ascertained share of any such owner in any proceeds of sale shall be paid into court for his benefit, subject to disposition according to law. If there are any unknown owners of any share or interest, or any other owners served under sections 634-59 or 634-60 who do not appear in the action, the court shall have power in making the general partition to allot and set apart for such share such a portion or portions of the property as the owners thereof would respectively be entitled to receive in the partition were they known and had appeared in the action. The portion so set apart for such share shall thereafter alone be the subject of ownership by such owner if he has been served. The remaining portions of the property shall be regarded as belonging to the other parties interested therein."

(n) Section 688-12 is amended by deleting the comma at the end of the second line, by inserting after the words and punctuation "with respect thereto," in the third line the words and punctuation "and the person interested has been served," and by changing the period at the end of the first sentence to a comma and adding "or inchoate right of dower."

(o) Section 668-13 is amended by changing the words "of allotment" in the tenth line to read "or allotment".

(p) Section 668-14 is amended by changing the words "the circuit" at the end of the fourth line to read "each circuit".

(q) Section 668-16 is amended to read as follows:

"Sec. 668-16. Default. All parties who have failed to plead or otherwise defend as provided by the rules of court shall, when that fact is made to appear, be deemed to be in default, and their default shall be entered. Such parties shall be deemed to have consented to such partition or other disposition of the property as may be decreed in accordance with this chapter."

(r) Section 668-17 is amended by changing the word "petitioner" in the second line to read "plaintiff", and by amending the last sentence to read as follows: "When more than ten defendants are named in a complaint for partition, no greater payment for costs shall be required of the plaintiff than would be required if there were but ten defendants."

(s) Section 668-6 is deleted.

SECTION 12. Chapter 669 of the Hawaii Revised Statutes is amended as follows:

(a) Section 669-1 is amended to read as follows:

"Sec. 669-1. Object of action. (a) Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.

(b) Action for the purpose of establishing title to real property may be brought by any person who has been in adverse possession of the real property for not less than ten years.

(c) Action under subsection (a) or (b) shall be brought in the circuit court of the circuit in which the property is situated."

(b) Section 669-2 is amended to read as follows:

"Sec. 669-2. Defendants; unknown persons. (a) Any person may be made a defendant in the action who has or claims, or may claim, an interest in the property adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the issues involved therein.

(b) Unknown persons may be made parties as provided by the rules of court, if:

- (1) It shall be shown by the complaint that there are or may be persons unknown, claiming by, through, or under any named person; or
- (2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.

(c) In any action brought under section 669-1(b):

- (1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.
- (2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the property which is the subject of the action except as provided by section 634-59."

(c) Section 669-3 is amended to read as follows:

"Sec. 669-3. Notice by publication or registered mail. In any action brought under section 669-1(a) or (b), unknown persons and any known persons who do not reside within the State or cannot for any reason be served with process within the State may be served as provided by sections 634-59, 634-60, and 634-63."

(d) A new section 669-3.5 is added, to read as follows:

"Sec. 669-3.5. Trial when legal title in controversy. Whenever in an action brought under this chapter the legal title is in controversy, the issue shall be triable of right by a jury.

(e) Section 669-8 is amended to read as follows:

"Sec. 669-8. Recording of judgment. The registrar of conveyances or the assistant registrar of the land court, as the case may be, shall receive and record or file and register every certified copy of judgment quieting title to property rendered by the circuit court under this chapter whenever the certified copy of judgment is presented to him for record or registration."

(f) Sections 669-4, 669-5, and 669-7 are deleted.

(g) The chapter heading is changed to read "Quieting Title".

SECTION 13. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 14. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 19, 1972.)

ACT 91

H. B. NO. 2049-72

A Bill for an Act Relating to Land Court Proceedings, Amending Chapter 501 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 501 of the Hawaii Revised Statutes is amended as follows:

(a) Section 501-1 is amended by changing the words "probate practices" in the caption to read "practice", by deleting the comma at the end of the seventh line, by deleting the comma in the eighth line, by inserting in the third paragraph, preceding the word "Sundays" in the second line, the word and punctuation "Saturdays," and by inserting a comma after the word "Sundays" in that line.

(b) Section 501-1 is further amended by amending the fifth paragraph to read as follows:

"The procedure shall conform as near as may be to the practice in the circuit courts, but subject to the express provisions of this chapter and to general laws and rules of court. Forms prescribed by the court before taking effect shall be approved by the supreme court."

(c) Section 501-11 is amended by deleting from the fifth and sixth lines the words "in term or vacation".

(d) Section 501-21 is amended by amending the seventh paragraph to read as follows:

"Any political subdivision of the State by its mayor, after resolution duly passed by its council so directing; the State, by the board of land and natural resources; or the government of the United States by any proper officer thereof thereunto duly authorized."

(e) Section 501-25 is amended by deleting from the fourth line the word "judicial" and by changing the period at the end of that line to a comma and adding the following: "except that the districts of North Kona and South Kona, referred to in subparagraphs (G) and (H) of section 4-1(1), shall be deemed one district for this purpose."

(f) Section 501-28 is amended by deleting from the ninth and tenth lines the words "rules laid down by the" and inserting in lieu thereof "the rules of".

(g) Section 501-30 is amended by deleting from the first line the words "court may by general rule" and inserting in lieu thereof "rules of court may".

(h) Section 501-42 is amended by amending the first sentence of the second paragraph to read as follows:

"If the applicant requests to have the line of a public way determined, the court shall order notice to be given by the registrar by mailing a registered letter to the attorney general, and to the mayor of the county where the land lies; and also to the corporation counsel or county attorney of the county."

(i) Section 501-45 is amended by deleting from the last line the words "rules laid down by the" and inserting in lieu thereof "the rules of".

(j) Section 501-51 is amended by deleting from the fourteenth line the words "by the judge of the circuit court in chambers" and inserting in lieu thereof the following: "in a matter within the jurisdiction of a circuit court as set forth in sections 603-21.6, 603-21.7, and 635-14".

(k) Section 501-51 is further amended by deleting from the sixth and seventh lines of the fourth paragraph the words "make such additional rules and instructions in regard to surveys as it deems proper" and inserting in lieu thereof the following: "may issue such additional instructions in regard to surveys as it deems proper or as are called for by the rules of court."

(l) Section 501-61 is amended by inserting a comma in the fifth line of the second paragraph after the figures "501-218" and by changing the word "therefore" in the thirteenth line of that paragraph to read "theretofore".

(m) Section 501-63 is amended to read as follows:

"Sec. 501-63. Appeal to supreme court. In all cases an appeal to the supreme court shall lie from the final decree of the land court on behalf of any party aggrieved by the decree. The record on appeal may include the proceedings in the circuit court, if any, as well as those in the land court."

(n) Section 501-64 is amended by deleting from the caption the words "as in equity" and by inserting in the third line, preceding the word "equity", the words "actions in the nature of suits in".

(o) Section 501-75 is amended by deleting from the fifth and sixth lines of the second paragraph the words "within the same judicial district" and by deleting the comma after the word "application" in the seventh line of the second paragraph and inserting the following: "as permitted by section 501-25,".

(p) Section 501-81 is amended by deleting from the twelfth and thirteenth lines the words "an assignee" and inserting in lieu thereof the words "a trustee".

(q) Section 501-82 is amended by deleting from the fifth and sixth lines of paragraph numbered (2) thereof the words "January 1 of the tax year involved" and inserting in lieu thereof the following: "the date on which the lien attached".

(r) Section 501-82 is further amended by amending paragraph numbered (6) to read as follows:

"(6) The possibility of reversal or vacation of the decree of registration upon appeal."

(s) Section 501-85 is amended by deleting from the next to the last line and the last line the words "sections 65-21 to 65-26 or the county ordinances where any of these provisions apply" and inserting in lieu thereof the following: "the laws and regulations covering subdivisions in the county concerned, applicable thereto."

(t) Section 501-101 is amended by amending the last sentence to read as follows: "The rules of court may provide for forms of conveyances respecting registered land."

(u) Section 501-106 is amended by deleting from the seventeenth line the words "legal and equitable".

(v) Section 501-118 is amended by changing the semicolon in the second line to a period and deleting the remainder of the first paragraph; by deleting from the first and second lines of the second paragraph the words "suit as provided by sections 667-1 to 667-4" and inserting in lieu thereof "action"; by deleting from the second line of the second paragraph the word "decree" and substituting "judgment"; by deleting from the second line of the third paragraph the words "decree of court" and inserting in lieu thereof the word "judgment"; and by deleting from the ninth line of the third paragraph the words "bill in equity" and inserting in lieu thereof "action".

(w) Section 501-132 is amended by deleting from the fourth line of the second paragraph the word "decree" and inserting in lieu thereof "judgment"; by deleting from the fourth and fifth lines of the second paragraph the words "on a bill for instructions or other proceeding"; and by deleting from the sixth line of the second paragraph the word "decree" and inserting in lieu thereof "judgment".

(x) Section 501-133 is amended by deleting from the fourth line the word "decree" and inserting in lieu thereof "order".

(y) Section 501-141 is amended by deleting from the twelfth line the words "or suit".

(z) Section 501-144 is amended by deleting from the next to the last line the words "legal and equitable".

(aa) Section 501-151 is amended to read as follows:

"Sec. 501-151. Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected, and the volume and page of the registration book where it is entered, is filed and registered, and a copy thereof sent by the assistant registrar by registered mail to the registered owner and holder of the certificate of title of the land affected, at his last known address. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided, that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter "judgment" includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a State court, may be filed and registered."

(bb) Section 501-152 is amended by deleting from the second line the words "or decree", and by deleting from the next to the last line the words and punctuation ", as provided in section 501-62,".

(cc) Section 501-153 is amended by deleting from the first line the word "real".

(dd) Section 501-154 is amended to read as follows:

"Sec. 501-154. Writ of possession, service, time limit for registration.

When in any action in the nature of an action of ejectment an execution or writ of possession has been issued and served by the officer, he shall cause a copy of the writ, with a return of his doings thereon, to be filed and registered within three months after the service and before the return of the writ into the clerk's office. The plaintiff, in case the judgment was that he was entitled to an estate in fee simple in the demanded premises, or in any part thereof, and for which execution or writ of possession issued, is thereupon entitled to the entry of a new certificate of title."

(ee) Section 501-155 is amended to read as follows:

"Sec. 501-155. Judgment directing conveyance. Any judgment of a court of competent jurisdiction affecting title or rights in registered land, may be registered, whether the claim adjudicated was legal or equitable in nature. The court entering the judgment upon application of the plaintiff may require the registered owner to deliver his duplicate certificate to the plaintiff to be canceled or to have a memorandum entered upon it by the assistant registrar. Every instrument necessary to give effect to the judgment and directed by the court to be executed, whether executed by a party or by some other person appointed by the court, shall be registered and shall have full force and effect to bind the land to be affected thereby. A judgment entered in lieu of directing a conveyance, and having the effect of a conveyance, shall be registered with like force and effect."

(ff) Section 501-156 is amended by deleting from the first line the words "all proceedings" and inserting in lieu thereof "an action", and by deleting from the second, fourth, fourteenth, sixteenth, and nineteenth lines the words "or decree".

(gg) Section 501-157 is amended by deleting from the second line the words "or decree".

(hh) Section 501-159 is amended to read as follows:

"Sec. 501-159. Decree of discharge. Whenever proceedings in bankruptcy against a registered owner of which notice has been registered, are vacated, or when the court of bankruptcy orders a reconveyance of land to a bankrupt debtor, a certified copy of the order or decree may be filed and registered. If a new certificate has been entered to the trustee in bankruptcy, as registered owner, the debtor is entitled to the entry of a new certificate to him, and the certificate of the trustee shall be surrendered."

(ii) Section 501-171 is amended by deleting from the eighth line the word "judge" and inserting in lieu thereof "court"; by deleting from the eighth and ninth lines the words "a certified copy of the order or decree of the circuit judge closing the probate proceedings, or"; by deleting from the tenth line the word "judge" and inserting in lieu thereof "circuit court"; by deleting from the nineteenth line the words "order or decree" and inserting in lieu thereof "judgment"; by deleting from the twentieth line the words "judge in equity" and inserting in lieu thereof "court in an action"; by deleting from the twenty-first line the word "judge" and inserting in lieu thereof "circuit court"; and by deleting from the sixth line of the second paragraph the words "in law or equity".

(jj) Section 501-172 is amended by deleting from the second line the words "a judge of" and by deleting from the third line the words "in chambers".

(kk) Section 501-173 is amended by deleting from the tenth line the word "judge" and inserting in lieu thereof "court".

(ll) Section 501-211 is amended by amending the second sentence to read as follows: "Where the land sought to be registered was not separately assessed at the time of the last assessment for taxation, the value of the same shall be as found by the court as of July 1 preceding the date on which the application was filed."

(mm) Section 501-212 is amended to read as follows:

"Sec. 501-212. Actions for compensation for fraud, mistake, etc. Any person who, without negligence on his part, sustains loss or damage, or is deprived of land or of any estate or interest therein, after the original registration of land under this chapter, by the registration of any other person as owner of such land, or of any estate or interest therein, through fraud, or in consequence of any error, omission, mistake, or misdescription in any certificate of title or in any entry of memorandum in the registration book, may prosecute a contract claim in the circuit court for the recovery of compensation for such loss or damage or for such land or estate, or interest therein; provided, that when the person deprived of land or of any estate, or interest therein, in the manner above stated, has a remedy for the recovery of the land or of the estate, or interest therein, he shall exhaust this remedy before resorting to the contract claim herein provided. Nothing in this chapter shall be construed to deprive the plaintiff of any tort claim which he may have against any person for loss or damage, or deprivation of land, or of any estate or interest therein. If the plaintiff elects to pursue his tort claim and also his contract claim under this chapter, the contract claim shall be continued to await the result of the tort claim or shall be deemed alternative thereto."

(nn) Section 501-213 is amended by deleting from the first line the words "action of contract" and inserting in lieu thereof "contract claim"; by deleting from the second line the word "brought" and inserting in lieu thereof the word "prosecuted"; and by deleting from the sixth line the words and punctuation "or the registrar,"

(oo) Section 501-214 is amended by deleting from the seventh and eighth lines the words "a judge of"; by deleting from the seventh line of the second paragraph the words "the judge of"; and by deleting from the seventh line of the second paragraph the word "whom" and inserting in lieu thereof "which".

(pp) Section 501-216 is amended by amending the second sentence to read as follows: "Nor shall any plaintiff prosecuting a contract claim under this chapter recover as compensation more than the fair market value of the real estate at the time when he suffered the loss, damage, or deprivation thereof."

(qq) Section 501-217 is amended by deleting from the first line the words "of contract" and inserting in lieu thereof "on contract claims"; by deleting from the seventh line the words "of contract for compensation" and inserting in lieu thereof "on the contract claim"; by deleting from the eighth line the word "the" preceding "action" and inserting in lieu thereof "that"; and by deleting from the eighth line the words "action of contract" and inserting in lieu thereof the words "contract claim".

(rr) Section 501-218 is amended by changing the period at the end of paragraph numbered (4) to a comma and adding the following: "or the value of the same as determined under section 501-211 when the land was not separately assessed."

(ss) Section 510-218 is further amended by deleting from the paragraph numbered (17) the words "appeal and".

(tt) The subtitle preceding section 501-151 is changed to read "Pending Actions; Judgments and Partitions; Recording".

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect July 1, 1973.

(Approved May 19, 1972.)

ACT 92

H. B. NO. 2111-72

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The unencumbered and unexpended balance of the sum of \$299,000 appropriated to the University of Hawaii by Act 80, Session Laws of Hawaii, 1971, to initiate the research and development phase of expanding the present two-year medical school to a degree granting program, is reappropriated as non-capital investment costs or operating costs for expanding the present two-year medical school to a degree granting program at the University of Hawaii for the fiscal biennium 1971-73.

SECTION 2. The University of Hawaii is authorized to establish, and with the approval of the governor fill, not more than 10.0 additional medical school positions in fiscal year 1972-73.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 93

H. B. NO. 2284-72

A Bill for an Act Relating to the Manner of Transferring Investment Securities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 490:8-102, Hawaii Revised Statutes, is amended to read:

"Sec. 490:8-102. Definitions and index of definitions. (1) In this Article unless the context otherwise requires

- (a) A 'security' is an instrument which
 - (i) Is issued in bearer or registered form; and
 - (ii) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - (iii) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and
 - (iv) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.
- (b) A writing which is a security is governed by this Article and not by Uniform Commercial Code-Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.
- (c) A security is in 'registered form' when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.
- (d) A security is in 'bearer form' when it runs to bearer according to its terms and not by reason of any indorsement.

"(2) A 'subsequent purchaser' is a person who takes other than by original issue.

"(3) A 'clearing corporation' is a corporation:

- (a) at least ninety per cent of the capital stock of which is held by or for one or more persons (other than individuals), each of whom
 - (i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or
 - (ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or
 - (iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934,

and none of whom, other than a national securities exchange or association, holds in excess of twenty per cent of the capital stock of such corporation; and

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

“(4) A ‘custodian bank’ is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

“(5) Other definitions applying to this Article or to specified parts thereof and the sections in which they appear are:

‘Adverse claim.’ Section 490:8-301.

‘Bona fide purchaser.’ Section 490:8-302.

‘Broker.’ Section 490:8-303.

‘Guarantee of the signature.’ Section 490:8-402.

‘Intermediary bank.’ Section 490:4-105.

‘Issuer.’ Section 490:8-201.

‘Overissue.’ Section 490:8-104.

“(6) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 94

H. B. NO. 2336-72

A Bill for an Act Relating to Veterans’ Rights and Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 363-5, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 363-5. Councils’ responsibility; burial of servicemen, veterans and dependents. The councils of the counties of Hawaii, Kauai, and Maui shall each provide for the establishment of the veterans cemetery or cemeteries to be located within their respective counties, which includes grading, filling, leveling, platting, paving of roadways and walks, installation of curbs, building of fences, planting of grass, trees and shrubs, erection of memorial buildings and monuments, and building of other necessary or convenient structures, and shall make provisions for the maintenance and upkeep of such cemetery or cemeteries. The councils shall each provide for the interment of the remains, of (1) residents or former residents of their respective counties who died while in the armed forces of the United States, and (2) of honorably discharged veterans of the armed forces of the United States with either peacetime or wartime

*Edited accordingly.

service and who are residents of their respective counties at the time of death, or who were former residents, and (3) of the widows, widowers, or minor children of such deceased servicemen or veterans, and (4) of the wife, husband, or minor children who predeceases a serviceman or veteran who would be himself entitled to interment provided that he must subscribe to a statement that he himself will be so interred in the same veterans cemetery; and provided, further, that as to former residents, the cost of transportation of the remains to the county of interment shall be borne by the family or estate of the deceased."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 95

H. B. NO. 2376-72

A Bill for An Act Relating to Home Manufacture of Wine.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-3, Hawaii Revised Statutes, is hereby amended to read as follows:

"Section 281-3. Illegal manufacture, importation or sale of liquor. It shall be unlawful for any person, not having a valid license, to manufacture, sell, or offer or expose or keep for sale, any liquor, except as otherwise provided in this chapter. Provided, however, the head of any family may produce for family use and not for sale an amount of wine not exceeding 200 gallons per annum.

It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter.

It shall also be unlawful for any person to label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", or "Aloha State" unless such liquor is wholly manufactured in the State.

It shall also be unlawful for any person to label, designate, or sell any rum as "Hawaii Rum" or "Hawaiian Rum" unless it shall have been aged for at least two years from the date of distillation.

A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by him.

SECTION 2. Materials to be repealed are bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

*Edited accordingly.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 96

H. B. NO. 2383-72

A Bill for an Act Amending Section 281-41, Hawaii Revised Statutes, Relating to the Transfer of Liquor Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 281-41. Transfer of licenses; notice of change in officers, directors and stockholders of corporate licenses; penalty. No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of such issuance or transfer except for good cause shown to the satisfaction of the liquor commission. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situate within the vicinity of the premises and without the right to such owners or lessees to protest the transfer of a license.

Where a license is held by a partnership, the commission may, notwithstanding this section, transfer the license upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice and without public hearing.

Where a license is held by a limited partnership, the admission or withdrawal of a limited partner shall not be deemed a transfer of the license held by the partnership, but the licensee shall, within thirty days from the date of such admission or withdrawal, so notify the commission in writing, stating the name of the partner or partners who have withdrawn, if such be the case, and the name, age and place of residence of the partner or partners who have been admitted, if that be the case. If the commission finds a limited partner to be an unfit or improper person to hold a license in his own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership until the unfit or improper partner is removed or replaced.

Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word ‘applicant’, as used in such sections, shall include each such proposed transferee, and the words, ‘application for a license or for the renewal of a license’, as used in such sections, shall include an application for the transfer of a license.

Upon the hearing, the commission shall consider the application and any objections to the granting thereof, and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer, and the refusal by the commission to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

If any licensee without such approval transfers to any other person his business for which his license was issued, either openly or under any undisclosed arrangement whereby any person other than the licensee comes into possession or control of the business, or takes in any partner or associate the commission may in its discretion suspend or cancel the license.

If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock which results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, within thirty days from the date of such transfer, notify the commission in writing. In addition, the corporate licensee shall, within thirty days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of such officer or director. If the commission finds the transferee, officer or director an unfit or improper person to hold a license in his own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of such capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper officer or director is removed or replaced.

If a licensee closes out the business for which the license is held, during the term for which the license was issued, he shall, within five days from the date of closing the same, give the commission written notice thereof and surrender his license for cancellation."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 97

H. B. NO. 2436-72

A Bill for an Act Relating to the Surrender of Private Land.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The first paragraph of Section 183-15, Hawaii Revised Statutes, is amended to read as follows:

*Edited accordingly.

"Section 183-15. Surrender of private land. Any person may, on agreement with the department of land and natural resources, at any time surrender to the government the care, custody and control of any lands, whether held under lease or in fee, as forest or water reserve lands, either for a term of not less than twenty years, or forever. The surrender agreement may reserve to the surrendering party all, part, or none of the rights to the water located or arising on or flowing through such surrendered lands. The agreement shall be in writing and shall contain the proviso that the government may develop and improve the lands through plantings and erosion control and may construct such improvements thereon as may be allowed by the agreement. On any land that is surrendered after the effective date of this Act, the government shall not retain title to any improvement, and the party surrendering shall not, at the end of the surrender period, be required to pay the government the value of any timber or other crops planted during the term of surrender."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 98

H. B. NO. 2511-72

A Bill for an Act Relating to Banks and Financial Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 403-94, Hawaii Revised Statutes, is amended to read as follows:

"Section 403-94. Loan to officers, directors, or employees; restrictions; liability of officers and directors. Except as herein provided, no bank shall make any loan or loans to any of its officers, directors, agents, or employees, or to any company, firm, copartnership, or association, excluding however corporations, in which any of the officers or directors of the bank may be interested, either directly or indirectly, except upon the written application of such person, firm, copartnership, or association, stating the line of credit applied for, terms and security, if any, offered therefor to the board of directors or to the advisory, discount, or executive committee of the board, and then only with the written approval of a majority of the board or a majority of the advisory, discount, or executive committee of the bank before the loan is made, and the approval of the loan as allowed by the board or the advisory, discount, or executive committee of the bank shall be made a part of the minutes of the next directors' meeting of the bank. Loans may be made to any officer, director, agent, or employee of any bank, without such application and approval, (1) in any amounts where the loans are secured by bonds of the

*Edited accordingly.

State, bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, where the amount of the collateral is equal to at least one hundred five per cent of the amount of any such loan; and (2) in amounts, excluding loans so secured, not in excess of \$5,000 in aggregate principal owing by any such individual at any one time. Any officer, director, agent, or employee of any bank who knowingly permits the funds of the bank to be loaned in a dishonest manner or contrary to this chapter shall be held responsible in his individual capacity for all damages which the bank, its shareholders, depositors, creditors, or any persons shall have sustained in consequence thereof.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

ACT 99**H. B. NO. 2517-72**

A Bill for an Act Relating to the Establishment of Work Incentive Program Units in the Department of Social Services and Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$22,688, or so much thereof as may be necessary, for the fiscal year 1972-73, to enable the department of social services and housing to establish special work incentive program units in each of the counties in accordance with provisions of Public Law 92-223 enacted on December 28, 1971, which require the establishment of separate administrative units to perform special program services for recipients of financial assistance who have been registered with the department of labor and industrial relations for employment or training. Services which the special administrative units are to provide include health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable individuals registered with the department of labor and industrial relations to accept employment or receive manpower training.

SECTION 2. The sum appropriated, which shall be contingent upon the federal participation rate for the program of social and supportive services being 90 per cent effective for personnel requirement costs and 75 per cent effective for other current expenses and equipment costs on or before the effective date of this Act, shall be expended by the department of social services and housing for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 19, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Ecology, Environment, and Recreation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

ENVIRONMENTAL QUALITY

PART I. DEFINITIONS AND GENERAL PROVISIONS

Sec. -1. Definitions. As used in this chapter, unless the context otherwise requires:

- (1) “Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule, regulation, or order promulgated pursuant to this chapter.
- (2) “Department” means the department of health.
- (3) “Director” means the director of health.
- (4) “Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.
- (5) “Permit” means authorization to discharge waste which, when granted, takes into account the public interest and contains a schedule of abatement approved by the director; or authorization to construct, modify, or operate any air pollution source; or authorization to emit excessive noise; or authorization to operate a sanitary land-fill or open dump.
- (6) “Person” means any individual, partnership, firm, association, public or private corporation, the State or any of its political subdivisions, trust estate or any other legal entity.
- (7) “Pollution” means air pollution, water pollution, or excessive noise as hereinafter defined.
- (8) “Treatment works” means any plant or other facility used for the purpose of controlling pollution.
- (9) “Variance” means authorization to discharge waste when, after public hearing the director finds that the continuance of the function or operation causing the waste discharge to be in the public interest, the value of the continuance to outweigh the harm caused by the waste discharge, and which does not require an immediate schedule of abatement.
- (10) “Waste” means sewage, industrial and agricultural waste, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State.

Sec. -2. Administration. The department shall administer this chapter through the director. The director may delegate to any person such power

and authority vested in him by this chapter as he deems reasonable and proper for the effective administration of this chapter, except the power to make rules and regulations.

Sec. -3. Powers, rule-making. The director may make, amend and repeal state rules and regulations controlling and prohibiting air pollution, water pollution, noise pollution, solid waste pollution, and any other form of pollution found in this State. All rules and regulations shall be adopted pursuant to chapter 91; provided that no rule or regulation, amendment or repeal made after the effective date of this chapter, shall be effective until sixty days after adoption and approval thereof and after notice of the adoption thereof has been published in a newspaper of general circulation in the area of the State affected thereby. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules or regulations.

Sec. -4. Fees. The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof. The fees shall be deposited to the credit of the general fund.

Sec. -5. Public records; confidential information; penalties. Reports submitted to the department on discharges of waste shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section

-10 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or regulation or standard promulgated pursuant to this chapter shall be fined not more than \$1,000.

Sec. -6. Permits; procedures for. (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules, regulations, and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if he determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if he determines that such is in the public interest. The director may, on application, modify the conditions of a permit in any manner consistent with the public interest. The director shall not deny an application for the issuance, renewal, or modification of a permit without affording the applicant a hearing in accordance with chapter 91.

The director may, on his own motion or the application of any person, modify, suspend, or revoke a permit if, after a hearing in accordance with chapter 91, he determines that such is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to grant an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within ninety days of the receipt of such application shall be deemed a grant of such application so long as the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a permit or a modification or renewal thereof shall be held in violation of this chapter during the pendency of his application so long as he acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

Sec. -7. Variances. (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may by rule or regulation prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the air and water quality standards and noise level standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the emission or discharge of pollutant or noise in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the discharge of waste by the granting of the variance is in the public interest;
- (2) The emission or discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules, regulations or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention control or abatement of the pollution or excessive noise involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the pollution or excessive noise involved.
- (2) The director may issue a variance for a period not exceeding ten years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air, discharge, effluent, or noise sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding ten years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided, further, that the renewal, and the variance issued in pursuance thereof, shall provide for emission or discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance.

(f) No variance granted pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

Sec. -8. Cease and desist orders. (a) If the director determines that any person is:

- (1) violating this chapter; or
- (2) violating any rule or regulation promulgated under this chapter;

he may cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports. Any such order shall become final unless no later than 20 days after the date of notice and order are served, the person or persons named therein request in writing a hearing before the director. Upon such request, the director shall require that the alleged violator or violators appear before him for a hearing at a time and place specified in the notice and answer the charges complained of.

In lieu of an order, the director may require that the alleged violator or violators appear before him for a hearing at a time and place specified in the notice and answer the charges complained of.

(b) If after a hearing held pursuant to subsection (a) of this section, the director finds that a violation or violations have occurred, he shall affirm or modify his order previously issued or issue an appropriate order or orders for

the prevention, abatement or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after hearing on an order contained in a notice, the director finds that no violation has occurred or is occurring, he shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(c) Any violation of an order issued by the director may at the discretion of the director subject the violator or violators to the penalties specified in section -11 and the injunction remedies specified in section -12.

The director is authorized to impose the penalty specified in section -11 and may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(d) Nothing in this section shall prevent the director from making efforts to obtain voluntary compliance by warning, conference, or any other appropriate means.

(e) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

Sec. -9. Emergency powers; procedures. (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by discharge of waste or any combination of discharges of waste, or excessive noise, which requires immediate action, he may, with the approval of the governor and without public hearing, order any person causing or contributing to the discharge of waste or excessive noise to immediately reduce or stop such discharge or emission or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

Sec. -10. Inspection of premises. The director may in accordance with law enter and inspect any building or place, for the purpose of investigating an actual or suspected source of water, air, noise or other pollution and ascertaining compliance or noncompliance with this part or any rule, regulation or standard promulgated by the department and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of his employment in the prevention, control, or abatement of water, air, noise, or other pollution shall be disclosed by the official or employee except as it relates directly to air, water, noise, and other pollution and then, only

in connection with his official duties and within the scope and course of his employment.

Sec. -11. Violations. (a) Any person who violates this chapter or any rule or regulation promulgated by the department pursuant to this chapter shall be fined not more than \$2,500. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building or place which he is authorized to enter and inspect under section -10 shall be fined not more than \$500.

Sec. -12. Injunctive relief. The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter or any rule or regulation made thereunder. The court shall have power to grant relief in accordance with the Hawaii Rules of Civil Procedure.

Sec. -13. Appeal. If any party is aggrieved by the decision of the director, he may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which he resides or has his principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

Sec. -14. Technical defect. No rule or regulation of the department shall be declared to be invalid because of any technical defect.

Sec. -15. Nonliability of department personnel. Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of his duties; provided that this section shall not apply to violations of section -5.

Sec. -16. Other action not barred. No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule or regulation of the department or the ordinance of any county shall be excluded or impaired by this chapter.

Sec. -17. Enforcement by state and county authorities. All state and county health authorities and police officers shall enforce this chapter and the rules, regulations, and orders of the department.

Sec. -18. Other powers of department not affected. The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

Sec. -19. Effect of laws, ordinances, rules, and regulations. (a) All laws, ordinances, rules, and regulations inconsistent with this part shall be void and of no effect.

(b) Any county may adopt ordinances, rules, and regulations governing any matter relating to environmental quality control which is not governed by a rule or regulation of the department adopted pursuant to this part; provided that any county ordinance, rule, or regulation relating to environmental quality control shall be void and of no effect as to any matter regulated by a rule or regulation of the department upon the adoption thereof.

Sec. -20. Priority in courts. All actions brought pursuant to this chapter or pursuant to the rules or regulations promulgated under this chapter shall in the discretion of the court receive priority in the courts of the State.

PART II. AIR POLLUTION

Sec. -21. Definitions. As used in this part, unless the context otherwise requires:

- (1) "Air pollution" means the presence in the outdoor air of substances in quantities and for durations which endanger human health or welfare, plant or animal life, or property or which unreasonably interfere with the comfortable enjoyment of life and property through the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards. These substances include, but are not limited to smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any combination of these.

Sec. -22. Powers and duties, specific. In addition to any other power or duty prescribed by law in this part, the director shall prevent, control, and abate air pollution in the State. In the discharge of this duty, the director may:

- (1) Establish by rule or regulation specific areas for control of air pollution, thereby allowing for varying local conditions;
- (2) require private persons or agencies or governmental agencies engaged or desiring to engage in operations which result or may result in air pollution to secure a permit prior to installation or operation or continued operation. The director shall refuse to issue the permit unless it appears that the operations would be in compliance with the rules and regulations of the department and the state ambient air quality standards. The director may also require the persons or agencies to submit plans and the filing of reports by the persons or agencies containing the information relating to location, size of outlet, height of outlet, rate incurred at emission and composition of discharge and such other matters relative to air pollution as the department shall prescribe to be filed.
- (3) require the owner or operator of any emission source to (a) establish and maintain such records; (b) make such reports; (c) install, use and maintain such monitoring equipment or methods; (d) sample such emission; and (e) provide such other information as the department may require.

- (4) conduct and supervise research programs for the purpose of determining the causes, effects, hazards or means to monitor or abate sources of air pollution.
- (5) conduct and supervise statewide educational and training programs on air pollution prevention, control, and abatement, including the preparation and distribution of information relating to air pollution.
- (6) appoint a master or masters to conduct investigations and hearings.
- (7) receive or initiate complaints on air pollution, hold hearings in connection with air pollution, and institute legal proceedings in the name of the state for the prevention, control, or abatement of air pollution.
- (8) with the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the state or from private sources for the study and control of air pollution.
- (9) establish ambient air quality standards for the state as a whole or for any part thereof.
- (10) require the installation, use, and proper maintenance of air pollution control equipment for motor vehicles.
- (11) establish and carry out a program of inspection and testing of all modes of transportation except aircraft, to enforce compliance with applicable emission limitations when necessary and practicable and to control or limit the operation of motor vehicular and other modes of transportation when the director finds pursuant to standards established by rules and regulations such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollutants or when such control is necessary to meet applicable ambient air quality standards.

Sec. -23 Prohibition. No person, including any public body, shall engage in any activity which causes air pollution without first securing approval in writing from the director.

PART III. WATER POLLUTION

Sec. -31 Definitions. As used in this part, unless the context otherwise requires:

- (1) "Coastal waters" means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide.
- (2) "Drainage ditch" means that facility used to carry storm run-off only.
- (3) "Effluent" means the discharge of any substance into state waters, including, but not limited to, sewage, waste, garbage, feculent

matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

- (4) "Effluent sources" include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, and industrial plants.
- (5) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
- (6) "State waters" means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a pollution control system are excluded.
- (7) "Water pollution" means:
 - (1) Such contamination or other alteration of the physical, chemical or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
 - (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural, industrial, research and scientific uses of such waters.

Sec. -32 Powers and duties, specific. In addition to any other power or duty prescribed by law and in this part, the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may:

- (1) Establish by rule or regulation water quality standards and effluent standards for specific areas in the control of water pollution, thereby allowing for varying local conditions;
- (2) Appoint a master or masters to conduct investigations and hearings;
- (3) Consult with and advise any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters;
- (4) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the purity and potability of water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;
- (5) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution;
- (6) Consult and advise persons intending to alter or to extend any system of drainage, sewage, or water supply;

- (7) Require complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of or alteration of any such works, system or plant which contain the information requested by the director in the form prescribed by him; which plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner;
- (8) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution; and
- (9) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution.

Sec. -33 Prohibition. No person, including any public body, shall use any state waters for the disposal of waste or engage in activity which causes state waters to become polluted without first securing approval in writing from the director.

No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director.

Sec. -34 Treatment works; construction grants. The director may make grants to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any state waters. He shall coordinate the granting of state funds with available federal funds for the same purpose. No grant shall be made for any project unless (1) the project conforms with the state water pollution control plan, (2) the project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs, (3) the application for the grant contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction, and (4) the applicant agrees to pay a predetermined portion of the estimated reasonable cost of the project. The basic state grant shall take into account both the portion of the cost to be paid by the applicant and the amount of the federal grant for which the project is eligible, but shall not exceed twenty-five per cent of the estimated reasonable cost. Any additional state funds granted for any eligible project shall be reimbursable to the State from future federal funds made available for construction of necessary treatment works.

PART IV. NOISE POLLUTION

Sec. -41 Definitions. As used in this part, unless the context otherwise requires:

- (1) "Excessive noise" means the presence of sound as measured by standard testing devices as established by the noise rules and regulations promulgated by the department of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the State or in such areas of the State as are affected thereby.

Sec. -42 Powers and duties, specific. In addition to any other duty prescribed by law and in this part, the director shall prevent, control, and abate excessive noise in the State. In the discharge of this duty, the director may:

- (1) Establish by rule or regulation specific areas for control of excessive noise, thereby allowing for varying local conditions;
- (2) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of excessive noise and the means whereby noise may be monitored, controlled, or abated;
- (3) Conduct and supervise state educational and training programs on noise prevention, control, and abatement, including the preparation and distribution of information relating to excessive noise;
- (4) Appoint a master or masters to conduct investigations and hearings;
- (5) Receive or initiate complaints of excessive noise, hold hearings in connection with excessive noise, and institute legal proceedings in the name of the State for the prevention, control or abatement of excessive noise; and
- (6) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State or from private sources for the study and control of excessive noise.

Sec. -43 Prohibition. No person, including any public body, shall engage in activity which, produces excessive noise without first securing approval in writing from the director.

PART V. SOLID WASTE POLLUTION

Sec. -51 Definitions. As used in this part, unless the context otherwise requires:

- (1) "Solid waste" means garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial and commercial operations, and from community activities, but does not include solid or dissolved material in domestic sewage or other substances in water sources, such as silt, dissolved or suspended

solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants. This definition is also intended to include liquid waste materials such as waste oil, pesticide, paints, solvents, and hazardous waste.

- (2) "Approved solid waste disposal system" means a system for the disposal of solid waste approved by the director.
- (3) "Sanitary landfill" means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.
- (4) "Incineration" means the destruction of solid waste by burning in a furnace designed for the purpose wherein solid waste is essentially reduced to ash, carbon dioxide, and water vapor.
- (5) "Open dump" means an unregulated disposal site that is operating without required compaction and cover.
- (6) "Hazardous waste" includes, but is not limited to such items as plastics, explosives, acids, caustics, chemicals, poisons, drugs, asbestos fibers, pathogenic wastes from hospitals, sanatoriums, nursing homes, clinics, and veterinary hospitals, waste from slaughterhouses, poultry processing plants and the like.

Sec. -52 Powers and duties, specific. In addition to any other power or duty prescribed by law and in this part, the director shall prevent, control, and abate solid waste pollution in the State. In the discharge of this duty the director may:

- (1) Establish by rule or regulation the criteria for siting design, construction, and operation of solid waste disposal systems;
- (2) Appoint a master or masters to conduct investigations and hearings;
- (3) Consult with and advise any person engaged or intending to be engaged in the disposal of solid waste;
- (4) Conduct and supervise research programs for the purpose of determining the sources of solid waste, effects, and hazards of pollution associated with disposal systems;
- (5) Conduct and supervise state educational and training programs on solid waste disposal systems, including the preparation and distribution of information relating to solid waste pollution;
- (6) Require complete and detailed plans or reports on existing solid waste disposal systems and of any proposed addition to, modification of, or alteration of any such systems which contain the information requested by the director in the form prescribed by him, which plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner; and
- (7) With the approval of the governor, cooperate with, and receive money from the federal government or any political subdivision of the State, or from private sources for the study and control of solid waste pollution.

Sec. -53 Prohibition. (a) No person, including any public body, shall engage in the operation of an open dump without first securing approval in writing from the director.

(b) No person, including any public body, shall operate a solid waste disposal system without first securing approval in writing from the director."

SECTION 2. Section 321-16; section 321-16.1; part V, chapter 322; part VI, chapter 322, and chapter 340, Hawaii Revised Statutes, as amended, are hereby repealed.

SECTION 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end, the provisions of the Act are severable.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before its effective date. This Act shall not be construed to invalidate currently existing rules and regulations of the department.

SECTION 5. This Act shall take effect three months after its approval.
(Approved May 22, 1972.)

ACT 101

S. B. NO. 1972-72

A Bill for an Act Relating to Public Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 87-1 Definitions. As used in this chapter:

- (1) "Board" means the board of trustees as described in section 87-11;
- (2) "Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of health services under group insurance contract or medical, hospital, or dental services agreements;
- (3) "Contributions" means money payments made to the fund by the State or the several counties or an employee-beneficiary;
- (4) "Dependent-beneficiary" means the spouse and legal children of an employee-beneficiary deemed eligible by the board to receive health or dental services of a health benefits plan;
- (5) "Employee" means an employee or officer of the state or county government,
 - (A) Including:
 - (i) A regularly employed member of the faculty of the University of Hawaii, including a research worker, an extension agent, or a person engaged in instructional or administrative work of the University;
 - (ii) A regularly employed administrative officer, principal, vice-principal, teacher, special teacher, cafeteria manager, or cafeteria worker of the public schools;

- (iii) An apprentice or on-the-job trainee whether or not supported by any federal grant;
 - (iv) An elective officer including a member of the legislature during his term of office, or a person who has served as a member of the legislature for at least a total of ten years;
 - (v) A probationary employee;
 - (vi) A per diem employee;
 - (vii) An officer or employee under an authorized leave of absence; or
 - (viii) An employee of the Hawaii national guard although paid from federal funds;
 - (ix) A retired member of the employees retirement system, the county pension system or the police, firemen, or bandsmen pension system of the State or county;
- (B) But excluding:
- (i) A designated beneficiary of a retired member of the employees retirement system, the county pension system or the police, firemen, or bandsmen pension system of the State or county;
 - (ii) A person employed temporarily on a fee or contract basis;
 - (iii) A person hired on a part-time, limited-term, or provisional basis;
 - (iv) A member of a board, commission, or agency appointed by the governor, or mayor or chairman of the State or county, respectively; and
 - (v) An employee of the legislature other than a member of the permanent staff;
- (6) "Employee-beneficiary" means an employee or the beneficiary of a retired member of the employees retirement system, a county pension system, or a police, firemen, and bandsmen pension system of the State or county upon the death of the retired member as long as the beneficiary receives a monthly benefit from any such system and, if a child, does not marry, or if a widow, does not remarry; provided that (A) the deceased retired member was enrolled in a family plan at the time of his death, and (B) the beneficiary was covered as a family member under the enrollment of the deceased retired member at the time of his death; and provided further that for the purposes of this subsection, "family member" means the deceased retired member's spouse and unmarried child under the age of nineteen years (including a legally adopted child and a stepchild or recognized natural child who lives with the deceased retired member in a regular parent-child relationship), or unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity which existed prior to his reaching the age of nineteen years; and provided further that the employee or beneficiary of the deceased retired member is deemed eligible by the board to receive health or dental services of a health benefits plan;

- (7) "Fund" means the trust fund as described in section 87-2;
- (8) "Health benefits plan" means (A) a group insurance contract or medical, hospital, or dental service agreement in which a carrier agrees to provide, pay for, arrange for or reimburse the cost of health or dental services as determined by the board or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;
- (9) "Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan; and
- (10) "Trustee" means a trustee of the board of trustees as described in section 87-11."

SECTION 2. Section 87-4, Hawaii Revised Statutes, is amended to read as follows:

Sec. 87-4 State and county contributions to the fund. The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$5 for each of their respective employee-beneficiaries and \$15 for each respective employee-beneficiary with a dependent-beneficiary, such contributions to be used towards the payment of costs of hospital, medical, and surgical benefits of a health benefits plan, provided, that the monthly contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall be \$15 for both of them.

The State or the appropriate county shall make a monthly contribution of \$1.76 for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled for dental benefits. The contributions shall be used towards the payment of costs of dental benefits of a health benefits plan. Notwithstanding any provisions to the contrary, no part of the fund shall be used to finance the contributions except a rate credit or reimbursement or earnings or interest therefrom received by the fund or general revenues appropriated for that purpose.

The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$2.25 for each of their respective employees to be used towards the payment of group life insurance benefits for each employee.

The contributions shall not be considered as wages or salary of an employee-beneficiary, and no employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon the first day of the third month after its approval.

(Approved May 22, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Larceny and Receiving Stolen Goods.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A new section is added to the Hawaii Revised Statutes to be appropriately numbered by the revisor of statutes and to read as follows:

"Sec. Theft in the first degree.

(1) A person commits the offense of theft in the first degree if he commits theft:

- (a) by obtaining property from the person of another; or
 - (b) of property or services the value of which exceeds \$200; or
 - (c) of a firearm; or
 - (d) of dynamite or other explosives.
- (2) Theft in the first degree is a Class C felony."

SECTION 2. A new section is added to the Hawaii Revised Statutes to be appropriately numbered by the revisor of statutes and to read as follows:

"Sec. 830—Theft.

A person commits theft if he does any of the following:

- (1) Obtains or exerts unauthorized control over property. He obtains, or exerts control over, the property of another with intent to deprive him of the property.
- (2) Property obtained or control exerted through deception. He obtains, or exerts control over, the property of another by deception with intent to deprive him of the property.
- (3) Extortion. He obtains, or exerts control over, the property of another by extortion with intent to deprive him of the property.
- (4) Appropriation of property. He obtains, or exerts control over, the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, he fails to take reasonable measures to discover and notify him.
- (5) Obtaining services by deception or extortion. He intentionally obtains services, known by him to be available only for compensation, by deception, extortion, false token, or other means to avoid payment for the services. Where compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.
- (6) Diversion of services. Having control over the disposition of services of another to which he is not entitled, he intentionally diverts those services to his own benefit or to the benefit of a person not entitled thereto.

(7) Failure to make required disposition of funds.

- (a) He intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from his own property reserved in equivalent amount, and deals with the property as his own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that he knows his legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that he has intentionally dealt with the property as his own.
- (b) He obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and he intentionally fails to make the payment or disposition at the proper time.

(8) Receiving stolen property. He intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, he acquires the property for a consideration which he knows is far below its reasonable value."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect on January 1, 1973.

(Approved May 23, 1972.)

ACT 103

H. B. NO. 1881-72

A Bill for an Act Relating to Agricultural Cooperative Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421-2, Hawaii Revised Statutes, is amended to read as follows:

*Edited accordingly.

"Sec. 421-2 Purposes. An association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

- (1) Producing, assembling, marketing, buying or selling agricultural products or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing the products, or manufacturing or marketing the by-products, thereof; provided seventy-five per cent of such agricultural products shall be of Hawaiian origin;
- (2) Manufacturing, buying for or supplying to its members machinery, equipment, feed, fertilizer, fuel, seeds, and other agricultural supplies;
- (3) Performing or furnishing business or educational services, on a co-operative basis, or to its members;
- (4) Financing any of the above enumerated activities for its members."

SECTION 2. Section 421-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-4 Articles of association. Articles of association shall be signed and acknowledged by each of the incorporators, if natural persons, and by the president and secretary of associations, before any officer authorized to take acknowledgments, and shall contain the following particulars:

- (1) The place of its principal office, which shall be in the State;
- (2) The purposes and powers of the association;
- (3) The proposed duration of the association;
- (4) The names and addresses of persons who are to act as the initial directors and officers of the association;
- (5) The names and post office addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (6) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of par value shares and the par value of each share, and if the privilege of subsequent extension of the authorized capital stock is asked for, the limit of the extension; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled;
- (7) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, if unequal, the rule by which the rights and interests shall be determined.

The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts, and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock."

SECTION 3. Section 421-6, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-6 Filing and recording articles of association, etc. (a) The articles of association, charters, and any certificates of amendment thereof shall be recorded in the office of the director of regulatory agencies in a book to be kept for the purpose, which shall at all times during business hours be open to the inspection of the public without charge.

(b) A certified copy of the articles or of a certificate of incorporation issued by the director shall be filed with the department of agriculture.

(c) On the filing of the articles of association with the director, the persons who have subscribed the articles, their associates, successors, and assigns, shall thereafter be a body corporate by the name and style provided in the articles; shall have succession and corporate existence for such term as shall have been agreed upon; which may be perpetual; shall have all of the powers and be subject to all of the liabilities provided for in this chapter; and shall be subject to all general laws in regard to the associations.

(d) No person dealing with the association shall be charged with constructive notice of the contents of the articles or amendments thereto by reason of the filing or recording.

(e) An association organized under this chapter shall be subject to section 416-97 relating to the payment of fees by corporations to the director."

SECTION 4. Section 421-9, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-9 Powers. (a) An association formed under this chapter, or an association which might be formed under this chapter and which existed at the time this chapter took effect, shall have the capacity to act possessed by natural persons, but the association shall have the authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

(b) Without limiting or enlarging the grant of authority contained in subsection (a), every association shall have authority:

- (1) To act as agent, broker, or attorney in fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.
- (2) To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable, or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association.
- (3) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase or otherwise acquire, endorse, discount, or sell

any evidence of debt, obligation, or security, but it shall not engage in banking.

- (4) To establish and accumulate reserves to capital.
- (5) To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing, or marketing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.
- (6) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require, subject to any limitation prescribed by law or its articles.
- (7) To borrow money and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.
- (8) To deal in agricultural products and handle agricultural machinery, equipment, and supplies, and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled, or performed for or on behalf of its members.
- (9) To have a corporate seal and to alter it at pleasure.
- (10) To continue as a corporation for the time limit in its articles, which may be perpetual.
- (11) To sue and be sued in its corporate name.
- (12) To conduct business in this State and elsewhere as may be permitted by law.
- (13) To dissolve and wind up its affairs."

SECTION 5. Section 421-18, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-18 Contracts between association and members.

(a) Period, withdrawal. The bylaws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it. If the members contract to sell to the association, the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract. The title shall pass to the association upon delivery of the product, or at any other time specified in the contract. If the period of the contract exceeds ten years, the bylaws and the contracts executed thereunder shall specify a reasonable period, not less than twenty days, in each year, after the tenth year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association. In the absence of a withdrawal provision, a member may withdraw at any time after ten years; provided that if a member is expelled from the association before the end of the ten year period, the contract shall be void.

(b) Damages for breach. The contract may fix, as liquidated damages, which shall not be regarded as penalties, specified sums to be paid by the members to the association upon the breach of any provision of the contract, regarding the use of any facilities of the association or the sale, delivery, handling, or withholding of products; and may further provide that the member who breaks his contract shall pay all costs including premiums for bonds, and reasonable attorney's fees, to be fixed by the court, in case the association prevails in any action upon the contract.

(c) Equitable relief. A court of competent jurisdiction may grant an injunction to prevent the breach of the contract by a member and may decree specific performance thereof. Pending the adjudication of the action and upon filing a verified complaint showing the breach or threatened breach, and a bond in such form and amount as may be approved by the court, the court may grant a temporary restraining order or preliminary injunction against the member.

(d) Recording contracts. The association may file contracts to sell agricultural products to or through the association in the office of the bureau of conveyances. If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice-president, or secretary, containing or having attached thereto:

- (1) A true copy of the uniform contract entered into with its members producing the product in the county;
- (2) The names of the members who have executed the contract and a description of the land on which the produce is produced if the description is contained in the contract.

The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing the product in the county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under the section shall state in substance that they are filed pursuant to this section. The bureau of conveyances shall file the affidavits and make endorsements thereon and record and make entries thereof in the same manner as required by law in the case of chattel mortgages, and shall compile and make available for public inspection a convenient index containing the names of all signers of the contracts, and collect for its services hereunder the same fees as for chattel mortgages. The filing of the contract, or the affidavit, shall constitute constructive notice of the association's title or right to the product embraced in the contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to the product. No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

(e) Effect of other statutes upon contracts. The provisions of this chapter are intended to encourage and to authorize associations to effectively produce and market agricultural products, and to derive the maximum benefits possible from such cooperative production and marketing. Accordingly, the contracts between an association and its members shall be deemed to authorize the collective production and marketing of the members' products, including but not limited to the combining, pooling and blending of production quotas, marketing adjustments and distribution rights, the provisions of any other law to the contrary notwithstanding. This section shall be liberally construed in favor of associations and their contracts with their members."

SECTION 6. Section 421-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-23 Taxation. Domestic associations organized under this chapter shall pay an annual license fee of \$10 to the director of regulatory agencies (and which shall be a general realization of the State) which shall be in lieu of all other corporation, franchise, and income taxes, and taxes and charges upon reserves held by the association for distribution to members, including without limitation upon the generality of the foregoing any taxes imposed under chapter 235.

To obtain the exemptions from taxation granted by this section or any other law, the association annually shall file with the director of taxation a copy of its report made under section 421-22, and in addition thereto, within ninety days after the close of its fiscal year, shall file with the tax assessor of each district in which there are persons doing business to whom it has paid, during the preceding fiscal year, any proceeds of goods marketed, a report showing the name of each person to whom the proceeds were paid, the total proceeds of sales for which such person is taxable under chapter 237 for the fiscal year, and the rate or rates of such tax applicable thereto or to the several amounts thereof, as the case may be."

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved May 23, 1972.)

ACT 104

H. B. NO. 2043-72

A Bill for an Act Relating to Evidence, Amending Chapters 621 and 622 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 621 of the Hawaii Revised Statutes is amended as follows:

*Edited accordingly.

(a) Section 621-1 is amended to read as follows:

"Sec. 621-1. Subpoena, issue of. The clerks of the several courts shall issue writs of subpoena as provided by the rules of court or by statute. Except as otherwise provided, the clerks shall issue to any prosecuting officer, and to any party plaintiff or defendant, in any cause, civil or criminal, pending before such courts, or to the counsel of the party, writs of subpoena for witnesses, in blank, so that the names of the witnesses to be summoned may be inserted after the issuing of the writs."

(b) Section 621-4 is amended to read as follows:

"Sec. 621-4. Compelling attendance. Upon nonattendance of witnesses duly summoned, the service of the writ being proved, the court shall have summary power to cause their attendance and to punish them for contempt."

(c) Section 621-5 is amended by deleting from the first sentence the words "On the trial of any issue joined or of any matter or question or on an inquiry arising in any suit, action, or proceeding in any court or before any person having by law or by consent of parties authority" and inserting in lieu thereof: "On the trial of any issue, matter or question, or on an inquiry arising in any action or proceeding in any court or before any person having authority".

(d) Section 621-5 is further amended by deleting the words and punctuation ", or a summons, or other process, and had received his conduct money and payment for expenses and loss of time".

(e) Section 621-7 is amended to read as follows:

"Section 621-7. Fees; criminal cases. Every witness legally required to attend upon a court or a grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$4 for each day's attendance and 20 cents for each mile actually and necessarily traveled, each way. Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day's attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way. Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), coming to attend as a witness from a district other than that in which the court is holding session, shall be allowed his travel cost and mileage fees as provided in this section.

A public officer or employee, if not salaried, shall receive witness fees."

(f) Section 621-8 is amended by deleting from the last line the words "from the place of his residence".

(g) Section 621-12 is amended to read as follows:

"Sec. 621-12. Oath; affirmation. All courts and persons having authority to hear, receive, and examine evidence, may administer oaths to all witnesses legally called before them. Any person called as a witness, or required or desiring to make an affidavit or deposition, may make an affirmation in the words following:

I, _____, do solemnly, sincerely and truly affirm and declare that the evidence, etc.

Such affirmation shall be of the same force and effect as if the person had taken an oath in the usual form."

(h) Section 621-13 is amended to read as follows:

"Sec. 621-13. Oaths, validity of. If an oath has been administered by a judge of a court of record, or by a clerk, notary public, or other person having authority to administer oaths by the law of the place where the oath was administered, it shall not be an objection to the validity of the oath that the judge or other person has not jurisdiction or cognizance of the matter or thing concerning which the oath was administered."

(i) Section 621-14 is amended by amending the first sentence to read as follows: "No person offered as a witness shall be excluded by reason of incapacity from crime or interest from giving evidence on the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court, or before any person having authority to hear, receive, and examine evidence."

(j) Section 621-14 is further amended by deleting from the second sentence the words "suit, action," and inserting in lieu thereof "action".

(k) Section 621-16 is amended to read as follows:

"Sec. 621-16. Minors may testify, when. On the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court, or before any person having authority to hear, receive, and examine evidence, it shall be lawful for the court or person to receive the evidence of any minor; provided, that the evidence of the minor is given upon his affirmation to tell the truth, the whole truth, and nothing but the truth, or in such other form as may be approved and allowed by the court or person and after he has been cautioned by the court or person, or in the case of a deposition by the person taking the deposition, that he will incur and be liable to punishment if he does not tell the truth; provided also, that no such evidence shall in any case be received unless it is proved to the satisfaction of the court or person authorized to hear, receive, and examine the evidence, that the minor perfectly understands the nature and object of the affirmation and the purpose for which his testimony is required."

(l) Section 621-17 is amended to read as follows:

"Sec. 621-17. Parties litigant, husbands, wives. On the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court or before any person having authority to hear, receive, and examine evidence, the parties thereto, and the party on whose behalf any such action or proceeding may be brought or defended, and the husbands and wives of the parties and persons respectively shall, except as provided in section 621-18 and 621-19, be competent and compellable to give evidence on behalf of either or any of the parties to the action or proceeding."

(m) Section 621-18 is amended by deleting the words and punctuation "or, except as hereinafter mentioned" which follow the first semicolon, and inserting in lieu thereof "or, except as otherwise provided".

(n) Section 621-20 is amended to read as follows:

"Sec. 621-20. Communications to clergymen. No clergymen of any church or religious denomination shall, without the consent of the person making the confidential communication, divulge in any action or proceeding, whether civil or criminal, any confidential communication made to him in his professional character according to the uses of the church or religious denomination to which he belongs."

(o) A new section 621-20.5 is added to read as follows:

"Sec. 621-20.5 Physician-patient privilege. (a) No physician shall, without the consent of his patient, divulge in any civil action or proceeding, unless the sanity of the patient be the matter in dispute, any information which he may have acquired in attending the patient, and which was necessary to enable him to prescribe or act for the patient; provided, that such consent shall be deemed to have been given to any physician (1) in every civil action which has been brought by any person for damages on account of personal injuries; and (2) in all cases in which a party to an action or proceeding offers himself or any physician or any person as a witness to testify to the physical or mental condition of the party.

(b) When the physical or mental condition (including the blood group) of a party to an action or proceeding is in controversy, he may be ordered to submit to a physical or mental examination by a physician as provided by the rules of court, and: (1) any information which may be acquired by such physician may be divulged without the consent of the person examined; (2) by requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(c) Within the meaning of this section the term "party" includes a person in the custody or under the legal control of a party."

(p) Section 621-21 is amended to read as follows:

"Sec. 621-21. Court to decide whether testimony would incriminate. No witness shall on the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding, whether civil or criminal, be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture, or may disgrace or incriminate him, unless the court or person having authority to hear, receive, and examine evidence, is of the opinion that the answer will tend to subject the witness to punishment for felony or misdemeanor."

(q) Section 621-22 is amended to read as follows:

"Sec. 621-22. Discrediting witness by proof of conviction.

Where, without the presence of the jury, it has been shown to the satisfaction of the court or person having authority to hear, receive, and examine evidence that a witness has been convicted of one or more felonies, or of misdemeanors involving moral turpitude, he may be questioned as to such con-

victions, and if, upon being so questioned, he either denies or refuses to answer, the party so questioning may prove such convictions. However, in a criminal case where the defendant takes the stand, the defendant may not be questioned or evidence introduced as to whether he has been convicted of any indictable or other offense unless the defendant has himself introduced testimony for the sole purpose of establishing his credibility as a witness.

Where such questioning or proof is permissible hereunder, the time, place and type of each offense may be elicited or proved.

(r) Section 621-25 is amended by changing the semicolon in the third line to a comma, by deleting from the fourth and fifth lines the words "by law or consent of parties,"; and by adding a new paragraph to read as follows: "A party shall not be deemed to have produced a witness within the meaning of this section if he has called the witness as an adverse witness as provided by the rules of court."

(s) Section 621-26 is amended to read as follows:

"Sec. 621-26. Confessions when admissible. No confession shall be received in evidence unless it is first made to appear to the judge before whom the case is being tried that the confession was in fact voluntarily made."

(t) Sections 621-2, 621-3, 621-6, and 621-27 are deleted.

SECTION 2. Chapter 622 of the Hawaii Revised Statutes is amended as follows:

(a) Section 622-1 is amended to read as follows:

"Sec. 622-1. Attesting witnesses not called, when. It shall not be necessary to prove an instrument by the attesting witness if attestation was not required in order for the instrument to be valid; and such instrument may be proved by admission or otherwise as if there had been no attesting witness."

(b) Section 622-2 is amended by deleting from the fifth and sixth lines the words "to the court or person and the jury or assessors (if any)".

(c) Section 622-3 is amended by deleting from the fifth line the words "by law or by consent of parties".

(d) Section 622-4 is amended by deleting from the fourteenth line the words "in any judicial or administrative proceeding".

(e) Section 622-5 is amended by deleting the comma following the word "court" in the sixth line and inserting: "or person having authority to hear, receive, and examine evidence,".

(f) Section 622-11 is amended by deleting from the seventh line the words "by law or by consent of parties".

(g) Section 622-12 is amended by deleting from the next to the last line the words "in the courts of the State".

(h) Section 622-13 is amended to read as follows:

Sec. 622-13. Proof of ordinances, rules, regulations, and other official acts.

(a) Whenever, in any proceedings before a court or person having authority to hear, receive and examine evidence, it is necessary to prove any ordinance of any county of the State, or any law, rule, regulation, or other official act or thing promulgated or enacted by or under authority of the Con-

stitution and laws of the United States or the State, a copy of such ordinance, bearing the certificate, as to its correctness, of the county clerk and under the seal of the county, or a copy of the law, rule, regulation, or other official act or thing, printed by authority, or bearing the certificate, as to its correctness, of the official in whose custody the original is kept, shall be admitted in evidence as prima facie proof of the contents thereof.

(b) A certified copy or copies of an ordinance or ordinances of any county may be filed by the clerk of the county with any court and thereafter the court may take judicial notice of the ordinance or ordinances and the contents thereof in any cause, without requiring a certified copy or copies to be filed or introduced as exhibits in such cause.

(c) Judicial notice shall be taken of an ordinance or ordinances of any county if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request, and (2) has given each adverse party such notice as the court may require to enable the adverse party to meet the request. The court shall afford the adverse party reasonable opportunity to present information relevant to the tenor of the ordinance to be noticed. If the court has insufficient information to enable it to notice the matter judicially, it shall decline to take judicial notice thereof."

(i) Section 622-14 is amended by deleting from the first line the word "legal", and by deleting from the next to the last line the words "in any court".

(j) Section 622-15 is amended by deleting from the sixth line the words "by law or by consent of parties".

(k) Section 622-16 is amended by deleting from the first line the word "legal" and by deleting from the sixth and seventh lines the words "in any court".

(l) Section 622-18 is amended by deleting from the fourth line the words "by law or by consent of parties".

(m) Section 622-20 is amended to read as follows:

"Sec. 622-20. Transcript of judgment, execution, return. A transcript from the docket of any district magistrate, sitting as the judge of a court not of record, of any judgment had before him, of the execution issued thereon, if any, and of the return to such execution, if any, when subscribed by the clerk or judge having the custody of the docket shall be evidence to prove the facts stated in the transcript in any court."

(n) Section 622-21 is amended by deleting from the first and second lines the word "legal".

(o) Section 622-22 is amended by deleting from the seventh line the words "by law or by consent of parties".

(p) Section 622-23 is amended by deleting from the second line the words "by law or by consent of parties", and by changing the word "masters" in the seventh line to read "master".

(q) Section 622-42 is amended by deleting from the second line the word "legal".

(r) Sections 622-44 and 622-45 are deleted.

(s) Section 622-51 is amended by adding a new paragraph (3) to read as follows:

"(3) "Officer" means a public officer, but does not include a person before whom a deposition is being taken."

(t) Section 622-52 is amended by amending subsection (a) to read as follows:

"Sec. 622-52. Subpoena duces tecum for medical records, compliance.

(a) Except as provided in section 622-55, whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a medical facility, in an action or other proceeding on a claim for personal injuries in which the custodian or his employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the medical facility, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in section 622-3) of all the medical records described in such subpoena to the clerk of the court or his deputy authorized to issue it, together with the affidavit described in section 622-53."

(u) Section 622-52 is further amended by deleting from subsection (b) the two numbered paragraphs, and inserting in lieu thereof the following:

"(1) If the subpoena directs attendance in court, to the clerk of such court or his deputy authorized to issue it, at the courthouse.

(2) In other cases, to the officer, board, commission, or tribunal conducting the hearing, at the place designated in the subpoena."

(v) Section 622-53 is amended by inserting a comma after the word "available", in the second line of subsection (c).

(w) Section 622-56 is amended by deleting from subsection (b) the words "required by section 621-3".

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)

A Bill for an Act Relating to the Limitation of Actions, Amending Chapter 657 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 657 of the Hawaii Revised Statutes is hereby amended as follows:

(a) Section 657-1 is amended to read as follows:

"Sec. 657-1. Six years. The following actions shall be commenced within six years next after the cause of action accrued, and not after:

- (1) Actions for the recovery of any debt founded upon any contract, obligation, or liability, excepting such as are brought upon the judgment or decree of a court;
- (2) Actions upon judgments or decrees rendered in any court not of record in the State, or, subject to section 657-9, in any court of record in any foreign jurisdiction;
- (3) Actions for taking or detaining any goods or chattels, including actions in the nature of replevin;
- (4) Personal actions of any nature whatsoever not specifically covered by the laws of the State.

(b) Section 657-2 is amended by inserting in the first line after the word "actions" the words "in the nature".

(c) A new section 657-3.5 is added, to read as follows:

Sec. 657-3.5. Relation back of amendments. An amendment pleading relates back to the date of the original pleading as provided by the rules of court.

Nothing herein limits or affects section 657-3."

(d) Section 657-5 is amended by changing the word "in" in the second line to read "of".

(e) Section 657-7 is amended by changing the word "damages" in the second line to read "damage".

(f) Section 657-11 is amended by deleting from the next to the last line the words "filed with the clerk of the court" and inserting in lieu thereof "commenced".

(g) Section 657-14 is amended by deleting from the last line the word "of" which precedes the words "right of action" and inserting in lieu thereof "the".

(h) Section 657-16 is amended to read as follows:

"Sec. 657-16. Extension of time by death.

If any person entitled to bring any action specified in this part, dies before the expiration of the time herein limited for the commencement of the action, if the cause of action survives to his representatives the cause of action shall not be barred sooner than four months after the date of death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled."

(i) Section 657-17 is amended to read as follows:

"Sec. 657-17. Death of person liable. The running of the limitation period upon any personal action, not barred as of the date of death of the person against whom the cause of action has accrued, shall be suspended for a period of four months from the date of death but no longer, except as otherwise provided."

(j) Section 657-18 is amended by inserting in the second line after the word "part" the words "or section 663-3", and by deleting from the third line the word "herein".

(k) Section 657-19 is amended to read as follows:

"Sec. 657-19. Extension by injunction. Whenever the commencement of any action is stayed by an injunction of any court, the time during which the injunction is in force shall not be deemed any portion of the time limited in this part or section 663-3 for the commencement of the action."

(l) Section 657-20 is amended to read as follows:

"Sec. 657-20. Extension by fraudulent concealment. If any person who is liable to any of the actions mentioned in this part or section 663-3, fraudulently conceals the existence of the cause of action or the identity of any person who is liable for the claim from the knowledge of the person entitled to bring the action, the action may be commenced at any time within six years after the person who is entitled to bring the same discovers or should have discovered, the existence of the cause of action or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations."

(m) Section 657-21 is amended by deleting from the first line the words "a suit" and inserting in lieu thereof "an action".

(n) Section 657-22 is amended by deleting from the next to the last line the words "a suit" and inserting in lieu thereof "an action", and by inserting in the last line preceding the period the words "or section 663-3".

(o) Section 657-34 is amended by deleting from the second line the comma which follows the word "action".

(p) Section 657-35 is amended by deleting from the third, fourth, and fifth lines the words and punctuation "and no determination or judgment has been had of or upon the title, right, or action which accrued to him," and by deleting from the fifth line the comma which follows the word "made".

(q) Section 657-12 and section 657-37 are deleted.

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect on July 1, 1973, provided, that the amendment of section 657-16 shall not shorten the time allowed for the commencement of an action by the representatives of a person who died before July 1, 1973.

(Approved May 23, 1972.)

ACT 106

H. B. NO. 2051-72

A Bill for an Act Relating to Liens, Amending Chapter 507 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 507 of the Hawaii Revised Statutes is amended as follows:

(a) Section 507-4 is amended by amending the last paragraph to read as follows:

"The liens may be enforced by action of the lienor in the circuit court of the judicial circuit in which judgment was rendered. Jurisdiction is conferred upon the circuit courts to hear and determine all actions brought or instituted to enforce and foreclose the liens, and the proceedings had before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings."

(b) Section 507-5 is amended by deleting from the next to the last line and the last line the words "mortgagor's equity of redemption" and inserting in lieu thereof the word "mortgage".

(c) Section 507-17 is amended by deleting from the last line of the next to the last paragraph the words "board of supervisors" and inserting in lieu thereof the word "council".

(d) Section 507-20 is amended to read as follows:

"Sec. 507-20. Defense to lien by claimants. Any person having an interest in the property held by a lienor under section 507-18 may intervene in the action."

(e) Section 507-21 is amended by deleting from the third and fifth lines the word "declaration" and inserting in lieu thereof "complaint".

(f) Section 507-22 is amended to read as follows:

"Sec. 507-22. Disputes as to application of proceeds of sale upon execution; jurisdiction of district courts; appeal. Where a dispute arises as to the application of the proceeds upon the sale under execution of property held by a lienor, the court shall order that the proceeds be paid into court. It shall thereupon determine to or among whom the proceeds shall be paid or divided. Nothing in section 604-5, limiting the jurisdiction of district courts, shall be construed as affecting the adjudication; but an appeal may be taken therefrom as in other civil cases."

(g) Section 507-43 is amended by inserting at the beginning of the first sentence a subsection designation and caption "(a) Requirements.", by inserting at the beginning of the second paragraph the subsection designation and caption "(b) Time for filing; action to vacate.", and by inserting subsection designations (c), (d), (e), (f), and (g) at the beginning of the third, fourth, fifth, sixth and seventh paragraphs, respectively.

(h) Section 507-43 is further amended by deleting from the fourth line the words "by law", by deleting from the next to the last line of the second paragraph the words "a suit" and inserting in lieu thereof "an action", and by deleting from the last line of the second paragraph the word "suit" and inserting in lieu thereof "action".

(i) Section 507-47 is amended by deleting from the third line the word "suit" and inserting in lieu thereof "action"; by deleting from the seventh line the words "the ordinary allegations" and inserting in lieu thereof "a claim in the nature"; by deleting from the thirteenth line the word "suit" and inserting in lieu thereof the words "the action"; by deleting from the twenty-third line the words "in equity"; by deleting from the next to the last line of the first paragraph the word "their" and inserting in lieu thereof "the"; and by deleting from the last line of the first paragraph the words "their respective suits" and inserting in lieu thereof "the respective actions".

(j) Section 507-47 is further amended by deleting from the first line of the second paragraph the word "suit" and inserting in lieu thereof "action"; by deleting from the second line of the second paragraph the words "of a circuit judge sitting in" and inserting in lieu thereof "pertaining to courts of"; and by amending the last sentence to read as follows: "In addition to costs of the action the court may allow any fee or fees for legal services rendered by the attorneys for any of the parties, and apportion the same as costs for payment by and between the parties or any of them, all as to the court seems equitable in the light of the services performed and the benefits derived therefrom by the parties respectively."

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)

ACT 107

H. B. NO. 2052-72

A Bill for an Act Relating to Proceedings Concerning Property, Amending Chapters 510, 514, 515, and 516, of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Subject to the provisions of Act 242 of the Session Laws of 1949, and without extending the scope of Chapter 510 of the Hawaii Revised Statutes, said chapter is amended as follows:

(a) Section 510-6 is amended by deleting from the sixth and seventh lines the words "file a complaint, duly verified, with the judge, at chambers, of" and inserting in lieu thereof "commence an action in"; by inserting in the first line of subsection (b) preceding the word "civil" the word "other"; by deleting from the first line of subsection (c) the words "of the complaint so filed"; by deleting from the first and next to the last lines of subsection (c) the word "judge" and inserting in lieu thereof "court"; by deleting from the second line of subsection (c) the words "a decree" and inserting in lieu thereof the word "judgment"; and by amending subsection (d) to read as follows:

"(d) In case of any change in conditions after the entry of judgment pursuant to this section, either spouse may by motion showing the change in conditions, apply to the same court for the modification or rescission of the judgment. In such case notice to the other spouse shall be given in such manner as the court may direct. Upon the hearing of the motion the court shall either deny the motion or modify or rescind the prior judgment, as to the court may appear to be just, proper, equitable, and to the best interests of the community."

(b) Section 510-7 is amended by deleting from the third line the word and punctuation ", suits," and by deleting from the next to the last line the word "decree" and inserting in lieu thereof "judgment".

(c) Section 510-10 is amended by deleting from the twelfth line of subsection (b) the word "judge" and inserting in lieu thereof "court".

SECTION 2. Chapter 514 of the Hawaii Revised Statutes is amended as follows:

(a) Section 514-24 is amended by deleting from the seventh line the word "suit" and inserting in lieu thereof "action", and by deleting from the fifteenth line the word "Suit" and inserting in lieu thereof "Action".

(b) Section 514-47 is amended by deleting from the sixth line the words "at law".

(c) Section 514-52 is amended by deleting from the second line the words "boards of supervisors" and inserting in lieu thereof "county councils".

SECTION 3. Chapter 515 of the Hawaii Revised Statutes is amended as follows:

(a) Section 515-10 is amended by inserting in the eleventh line of subsection (e), after the words "consent of the respondent" the word "or".

(b) Section 515-13 is amended by deleting from the first and second lines of subsection (d) the words "a petition by the respondent for judicial review" and inserting in lieu thereof "an appeal by the respondent".

(c) Section 515-14 is amended to read as follows:

"Sec. 515-14. Judicial review; enforcement. (a) A complainant or respondent aggrieved by an order of the department of regulatory agencies, including an order dismissing a complaint, or stating the terms of a conciliation agreement, may obtain judicial review by taking an appeal to the circuit court in the manner and within the time provided by the rules of court.

(b) A proceeding for enforcement is initiated by filing a petition in the circuit court within thirty days after a copy of the order of the department is received. Copies of the petition shall be served upon all parties of record.

(c) If the department fails to schedule a hearing in accordance with section 515-11 (a) or fails to issue an order within one hundred and eighty days after the complaint is filed, the complainant, respondent, or the attorney general may petition the circuit court in a circuit in which the alleged discriminatory practice set forth in the complaint occurs or in which the petitioner resides or transacts business for an order directing the department to take such action. Service shall be made upon all parties. Within thirty days after the service of the petition upon the department, or such other time as the court may fix, the department shall transmit to the court the original or a certified copy of the entire record, including any transcript of testimony.

(d) An objection not urged at a hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remit the case to the department in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon; provided he shows good cause for the failure to adduce such evidence before the department.

(e) The jurisdiction of the circuit court is exclusive. Its final judgment shall be subject to an appeal to the supreme court. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(f) If no timely proceeding for review is initiated, the department may obtain a decree of the court for enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent and that the respondent is subject to the jurisdiction of the court. The time limit of thirty days shall not apply to the department's petition.

(g) In a proceeding under this section, the court may grant such temporary relief or restraining order as it deems just, and in a review proceeding may enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings. All such proceedings shall be heard and determined by the court as expeditiously as possible and with precedence over all other matters before it, except matters of like nature."

SECTION 4. Chapter 516 of the Hawaii Revised Statutes is amended as follows:

(a) Section 516-38 is amended by deleting from the fifth and sixth lines of the last paragraph the words "suit, action, or proceedings" and inserting in lieu thereof "action or proceeding".

(b) Section 516-81 is amended by deleting from the last line "chapter 631" and inserting in lieu thereof "section 602-5 (3)".

SECTION 5. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 6. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)

ACT 108

H. B. NO. 2053-72

A Bill for an Act Relating to Decedents' Estates, Amending Chapters 531, 532, 533, and 535 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 531 of the Hawaii Revised Statutes is amended as follows:

(a) The word "judge" is changed to "court" wherever the same appears in sections 531-1, 531-6, 531-7, 531-8, 531-9, 531-12, 531-13, 531-14, 531-15, 531-17, 531-22, 531-28, 531-29, and 531-32.

(b) The words "sitting at chambers and" are deleted from section 531-9.

(c) The words "in equity" and "presiding" are deleted from section 531-15.

(d) The words "or judge" are deleted from paragraphs (2) and (3) of section 531-21.

(e) The word "suits" is changed to "actions" in the captions of sections 531-25 and 531-26.

(f) The word "he" is changed to "it" in the twenty-first line of the second paragraph of section 531-29, and in the eleventh and twelfth lines of section 531-32.

(g) The words "or judge" and the words "or his" are deleted from section 531-31.

(h) The words "judge of the" are deleted from the last sentence of section 531-52, and in the same sentence the word "he" is changed to "it".

(i) The words "judge of the court sitting at chambers in probate" are changed to "court having jurisdiction in probate" in section 531-55.

(j) The words "corporation counsel or" are inserted preceding "county attorney" in section 531-58.

(k) Section 531-2 is amended to read as follows:

"Sec. 531-2. Jury trial, when. Whenever the value of the estate of any deceased person exceeds \$500, any person claiming, before any circuit court sitting as a court of probate, the estate, or any part thereof, or any interest therein, by virtue of any will or testamentary devise, or by virtue of the statutes of descent of property in the State, who deems himself aggrieved by the decision of the court may, if any matter of fact is in issue, move that the issue of fact may be tried by a jury, and his motion shall not be denied. The motion shall be made not later than ten days after filing of the decision.

The judge who presided at the original hearing shall not preside at the trial before the jury."

(l) Section 531-3 is amended to read as follows:

"Sec. 531-3. Jury trial on request of prevailing party. When a motion for trial by a jury is made by the party against whom judgment has been rendered by the circuit court sitting as a court of probate, the prevailing party may likewise move the court that any issue of fact may be tried by a jury, and his motion shall not be denied. The motion shall be made not later than ten days after the opposing party has made his motion."

(m) Section 531-4 is amended to read as follows:

"Sec. 531-4. Evidence on jury trial; no retrial by the court without a jury. On any trial held pursuant to a motion under section 531-2 or section 531-3, the record of the court on the original hearing may be read as testimony, and either party may introduce further testimony, and also reexamine orally any witnesses whom he may have produced and examined on the original hearing. There shall be no retrial of any issue of fact by the court without a jury, unless a new trial is granted on grounds duly shown."

SECTION 2. Chapter 532 of the Hawaii Revised Statutes is amended by deleting from the thirteenth line of section 532-7 the words "at law or other process" and the word "hereafter".

SECTION 3. Chapter 533 of the Hawaii Revised Statutes is amended by adding to section 533-17 a new paragraph to read as follows:

"When the dower or curtesy in real estate cannot be set apart without great injury to the owners, the court may ascertain the value of the dower or curtesy in money, and order the same to be paid on such terms as shall be just and reasonable."

SECTION 4. Chapter 535 of the Hawaii Revised Statutes is amended as follows:

(a) Section 535-1 is amended by deleting from the third and fourth lines the words "file a complaint before a circuit judge" and inserting in lieu thereof "commence an action in a circuit court", and by deleting from the next to the last line the words "complaint to be filed" and inserting in lieu thereof the words "action to be commenced".

(b) Section 535-2 is amended to read as follows:

"Sec. 535-2. Judgment in such case. The court shall hear and decide every such case, according to the usages and principles of courts of equity, and shall render such judgment therein as justice and equity may require."

(c) Section 535-3 is amended by deleting from the second and sixth lines the word "judge" and inserting in lieu thereof the word "court".

(d) Section 535-4 is amended by deleting from the second line the word "decree" and inserting in lieu thereof the word "judgment".

(e) Section 535-6 is amended by deleting from the second and sixth lines the word "suit" and inserting in lieu thereof the word "action".

(f) Section 535-7 is amended by changing the word "Suit" in the caption to read "Action"; by deleting from the third line the words "a suit" and inserting in lieu thereof "an action"; by deleting from the sixth line the words "file a complaint before" and inserting in lieu thereof "commence an action in"; by deleting from the sixth and seventh lines the word "judge" and inserting in lieu thereof "court"; by deleting from the eighth line the words "his decree" and inserting in lieu thereof "its judgment"; and by deleting from the last line the words "on his part".

(g) Section 535-5 is deleted.

SECTION 5. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 6. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)

ACT 109

H. B. NO. 2058-72

A Bill for an Act Relating to Crimes and Criminal Procedures, Amending Sections 709-4, 709-51, 711-96, and 747-17 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii.

SECTION 1. Chapter 709 of the Hawaii Revised Statutes is amended as follows:

(a) Section 709-4 is amended by deleting from the sixth and seventh lines the words and punctuation "writ of error, exceptions, certiorari".

(b) Section 709-51 is amended by amending the first sentence to read as follows: "Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up

judgment in favor of the State and against the principal or principals and surety or sureties on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of ten days from the date of the entry of the judgment, unless before the expiration of ten days from the entry of the judgment a motion or application of the principal or principals, surety or sureties, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court."

(c) Section 709-51 is further amended by deleting from the third and fourth lines of the last paragraph the words "and in each and every peace bond" and by deleting from the next to the last line and the last line the words and punctuation "bond, recognizance, or peace bond," and inserting in lieu thereof the words and punctuation "bond or recognizance,".

SECTION 2. Chapter 711 of the Hawaii Revised Statutes is amended by amending section 711-96 to read as follows:

"Sec. 711-96. Court proceedings; reports to county clerk. Whenever in any circuit court, family court, or district court any citizen of eighteen years of age or over is:

- (1) Convicted of any felony;
- (2) By reason of insanity acquitted of any such crime; or
- (3) Adjudged insane or feebleminded or otherwise legally incompetent,

the clerk of the court shall in each case within ten days thereafter make and promptly transmit to the clerk of each county a certificate showing the fact of the conviction or adjudication and a sufficient identifying description of the citizen."

SECTION 3. Chapter 747 of the Hawaii Revised Statutes is amended by amending section 747-17 by changing the word "Suit" in the caption to read "Action"; by inserting in the fourth line after the words "county attorney" the words and punctuation, "prosecuting attorney, or corporation counsel"; by deleting from the fourth line the words "a suit" and inserting in lieu thereof "an action"; by deleting from the sixth line the word "suit" and inserting in lieu thereof "action"; by deleting from the ninth line the words "or petitioner"; by deleting from the first line of the second paragraph the words "suit or"; by deleting from the second and third lines of the second paragraph the words "under sections 624-1 to 624-45"; by deleting from the fourth, fifth, and ninth lines of the second paragraph the words "or petitioner"; and by inserting in the ninth line of the second paragraph, preceding the word "plaintiff", the word "the".

SECTION 4. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 5. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)

A Bill for an Act Relating to the Acquisition and Disposition of Lands for Agricultural Purposes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a growing scarcity of agricultural lands throughout the State caused by urban encroachment which has made it difficult for agricultural enterprises to survive and has caused the erosion of the agricultural base of the economy; that urban encroachment has caused the unplanned relocation of livestock operations many times in the past twenty years; that urban plans have not placed the necessary emphasis on agriculture and location of agricultural enterprises to insure the survival of agriculture; that there is a need for agricultural land-use planning, particularly, the planning of alternative uses for lands such as Kahuku which have been phased out of sugar without clear use alternatives; and that the acquisition of private property for agriculture purposes is a public purpose or use necessary to facilitate sound agricultural land-use planning.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding the following sections to said chapter:

"Sec. 171- Acquisition. The board of land and natural resources is hereby authorized to acquire by lease, exchange, direct purchase or eminent domain private property for disposition for agricultural purposes, including but not limited to agricultural parks.

"Sec. 171- Definition of agricultural park. For the purposes of this Act, agricultural park shall mean any planned agricultural complex which combines and concentrates in a common location a number of agricultural activities for the purpose of realizing production and distribution economies. Agricultural buildings, farm residences, and employee dwellings necessary to the production and distribution of agricultural commodities shall be considered part of the agricultural park.

"Sec. 171- Disposition. Any provision of this chapter to the contrary notwithstanding, the board of land and natural resources is hereby authorized to directly dispose of such land by negotiation and without recourse to public auction. All such dispositions shall be by lease only and shall be subject to the requirements set forth in Article X, section 4 of the State Constitution and in sections 171-33, 171-34, 171-35, 171-36, 171-37, and 171-66 and subject also the following limitations:

"(1) The property shall be disposed of for agricultural purposes only.

"(2) The lessee shall derive the major portion of his total annual income from his activities on the premises;

"(3) The lessee must comply with all Federal and State laws regarding environmental quality control;

"(4) Other terms and conditions as may be set by the board.

"The violation of any provision herein contained shall be sufficient cause for the board after notice as provided in section 171-20 to cancel said lease and take possession of said land.

"Sec. 171- Applicants. A person shall be eligible to apply for a lease hereunder if he meets the qualifications set forth in section 171-68.

"Sec. 171- Preference right. A displaced farmer who is otherwise qualified to take a farm lot, or any farmer whose farm is located in a zoning district where such use is a non-conforming use, shall be given preference in obtaining a lot."

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 1972.)

ACT 111

S. B. NO 452

A Bill for an Act Relating to Exempt Securities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485-4, Hawaii Revised Statutes, is amended to read:

"Sec. 485-4. Exempt securities. The following securities are exempt from sections 485-8 and 485-25 (a) (7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision, of such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by an industrial loan company duly licensed under the industrial loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;

- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a Company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit sharing, or similar benefit plan, if the commissioner is notified in writing thirty days before the inception of the plan."

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 1972.)

ACT 112

S. B. NO. 967

A Bill for an Act Relating to Game Mammals, and Amending Section 191-21 of the Revised Laws of Hawaii 1970, As Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 191-21, Hawaii Revised Statutes, is amended to read as follows:

"Section 191-21. Open and closed seasons, bag limits on game mammals, etc.; penalty. The department of land and natural resources may, pur-

*Edited accordingly.

suant to law, adopt rules and regulations for the purpose of protecting, conserving, propagating, and harvesting deer, feral sheep, goat, and pig and any other game mammal that may be or has been introduced into the State for hunting purpose. The department may, by regulation, as hereinafter provided, fix, determine, increase, limit, reduce, or otherwise change any open seasons and bag limits on game mammals, method of taking, as well as the days and hours during which hunting of game mammals shall be allowed, throughout the State or in any county or in any part of any county as it deems advisable for the better protection, propagation, and conservation of any variety or species of game mammals.

Any one violating the provisions of such rules and regulations shall be fined not less than \$25 nor more than \$200 or imprisoned not less than thirty days nor more than ninety days, or both."

SECTION 2. Statutory material to be deleted is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 1972.)

ACT 113

S. B. NO. 1823-72

A Bill for an Act Relating to the Specific Provisions of Industrial Loan Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 408-14 is amended as follows:

"**Sec. 408-14. Specific powers.** Every industrial loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of co-makers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action, notwithstanding section 416-31 to the contrary;
- (4) To establish branches within the State with the prior written approval of the bank examiner;

*Edited accordingly.

- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into the purchases; and
- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without allowance of interest on the installments; provided, that nothing herein shall be construed to authorize any industrial loan company to receive deposits or to create any liability due to demand.

The certificates shall not be issued by any such company without receiving the prior written approval of the bank examiner, and shall bear upon the face of the instrument the words, 'THIS IS NOT A CERTIFICATE OF DEPOSIT.'

No industrial loan company shall have outstanding at any time its certificates and/or its debentures registered under chapter 485 in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus; provided, that the bank examiner shall have the authority to limit the ratio of certificates and/or debentures to capital and surplus which may be issued by any industrial loan company if he determines that such lower ratio is necessary in the public interest. In determining the ratio to be permitted, the bank examiner shall consider all relevant circumstances, including, without limitation, the following factors:

- (1) The length of time the company has been in operation.
- (2) Ratio of losses to volume of loans made and contracts purchased.
- (3) The creation and maintenance of adequate reserve for losses.
- (4) Charge-off of uncollectable accounts.
- (5) The amount or growth of undivided profits and/or earned surplus.
- (6) Diversification of character and source of loans made and contracts purchased.
- (7) Creation and maintenance of adequate internal controls.
- (8) Sound and efficient management.

Every industrial loan company shall, as of July 1, 1969, maintain and have on hand at all times a cash or other security reserve in an amount equal to three per cent of its liabilities on outstanding certificates, and after December 31, 1969, maintain and have on hand at all times a cash or other security reserve in an amount equal to four per cent of its liabilities on outstanding certificates, which reserve shall not be pledged.

The security reserve shall be limited to direct obligations of the United States government, state, county, and securities listed on the New York stock exchange and the American stock exchange and no more than 25 per cent of the total reserve of cash and other security shall be held in securities listed on the New York stock exchange and the American stock exchange.

SECTION 2. Except as otherwise indicated, new material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

*Edited accordingly.

SECTION 3. This Act shall take effect July 1, 1972.

(Approved May 23, 1972.)

ACT 114

H. B. NO. 290

A Bill for an Act Relating to the Uniform Controlled Substances Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The legislature finds that: (1) pentazozine listed in Schedule III of S.B. 310, S.D. 1, H.D. 1, C.D. 1 is not a drug; (2) the spelling of "pentazozine" is similar to the spelling of the drug "pentazocine"; (3) pentazocine is not listed in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended; (4) pentazocine is not listed in the Uniform Controlled Substances Act as recommended by the Commission on Uniform State Law; (5) the American Medical Association Council on Drug found that it should not be controlled; (6) the World Health Organization Expert Committee on Drug Dependence found that it should not be controlled; (7) "pentazozine" was mistakenly placed in S.B. 310, S.D. 1, H.D. 1, C.D. 1; and (8) "pentazocine" is a drug which should not be placed in Schedule III of S.B. 310, S.D. 1, H.D. 1, C.D. 1.

The legislature also finds that: (1) apomorphine listed in Schedule III of S.B. 310, S.D. 1, H.D. 1, C.D. 1 is listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended; (2) the listing of apomorphine in Schedule II of S.B. 310, S.D. 1, H.D. 1, C.D. 1 will achieve uniformity in the Schedule of Substances found in the Comprehensive Drug Abuse Act of 1970, as amended, and S.B. 310, S.D. 1, H.D. 1, C.D. 1 and will simplify implementation of the control of substances on a uniform State and Federal basis.

The legislature further finds that: (1) the Hawaii Advisory Commission on Controlled Substances established in S.B. 310, S.D. 1, H.D. 1, C.D. 1 is intended in part to duplicate functions presently being performed by the Hawaii Committee on Drug Abuse which is administratively housed in the office of the governor; (2) the continuity of the programs and liaisons relating to substance abuse established by the Hawaii Committee on Drug Abuse is desirable; (3) the continuity can be maintained by amplifying the functions of the Hawaii Advisory Commission on Controlled Substances to include substance abuse and permitting it to remain in the office of the governor for administrative purposes.

The purpose of this act is to amend S.B. 310, S.D. 1, H.D. 1, C.D. 1 as an act, if it becomes an act by: (1) eliminating "pentazocine" from the schedule of substances contained therein, and further that it be scheduled, if at all, only after a standardized review of drugs including drugs of a similar nature and effect as "pentazocine"; (2) rescheduling "apomorphine" from Schedule III to Schedule II; and (3) amplifying the functions of the Hawaii Commission on Controlled Substances to include substance abuse; to allow it to sit in an advisory capacity to all State departments; and to permit it to remain in the office of the governor for administrative purposes.

SECTION 2. Senate Bill Number 310, S.D. 1, H.D. 1, C.D. 1, heretofore passed by the Sixth Legislature, Regular Session 1972, is amended in the following particulars:

(1) By amending Sec. 12 to read:

"Sec. 12. Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a stimulant effect on the central nervous system;

(1) Phenmetrazine and its salts;

(2) Methyphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system;

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other Schedules;

(2) Chlorhexadol;

(3) Glutethimide;

(4) Lysergic acid;

(5) Lysergic acid amide;

(6) Methyprylon;

(7) Phencyclidine;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane.

(d) Nalorphine.

(3) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with

one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- (6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
- (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
- (8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system."

(2) By amending Sec. -10 to read:

"Sec. -10. Schedule II. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;

- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine; 4-carboxylate;
- (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Any substance, except those substances which are specifically listed in other schedules, which contains the following barbituric acid derivatives or combinations of these substances: (1) secobarbital; (2) hexobarbital; (3) pentobarbital; (4) amobarbital; (5) apomorphine.

(e) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system;

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers."
- (3) By amending Sec. -4 to read:

"Sec. -4. Duties of the commission. The Commission shall:

- (1) Act in an advisory capacity to the department relating to the scheduling of substances provided in part II of this chapter, by recommending the addition, deletion, or rescheduling of all substances enumerated in part II of this chapter.
- (2) Act in an advisory capacity to the department relating to establishment and maintenance of the classes of controlled substances, as provided in part II of this chapter.
- (3) Assist the department in coordinating all action programs of community agencies (State, county, military, or private) specifically focused on the problem of drug abuse.
- (4) Assist the department in carrying out educational programs designed to prevent and deter abuse of controlled substances.

- (5) Encourage research on abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, it may, with the approval of the director of health: (A) establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse; (B) make studies and undertake programs of research to:
 - (i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter.
 - (ii) determine patterns of abuse of controlled substances and the social effects thereof; and
 - (iii) improve methods for preventing, predicting, understanding, and dealing with the abuse of controlled substances.
- (6) Create public awareness and understanding of the problems of drug abuse; and
- (7) Sit in an advisory capacity to the governor and other State departments as may be appropriate on matters relating to the commission's work."

(4) By amending Sec. -2 to read:

"Sec. -2. Hawaii advisory commission on drug abuse and controlled substances; number; appointment. There shall be established a state advisory commission on drug abuse and controlled substances hereinafter called the commission, consisting of fifteen members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. The commission shall elect its chairman. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission.

The commission shall be a part of the office of the governor for administrative purposes, as provided for in section 26-35, Hawaii Revised Statutes."

SECTION 3. This Act shall take effect, upon approval, only if S.B. 310, S.D. 1, H.D. 1, C.D. 1 becomes an Act.

(Approved May 25, 1972.)

ACT 115

H. B. NO. 1680-72

A Bill for an Act Relating to Family Courts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-45 of the Hawaii Revised Statutes is hereby amended to read as follows:

"Sec. 571-45. Investigation prior to disposition. Except where the requirement is waived by the judge a social study and a report in writing shall be

made in the case of a minor concerning whom a petition has been filed under subsection 571-11(1) and (2). The study shall be initiated upon the filing of a petition except in petitions filed under 571-11(1) when it is ascertained that the minor denies the allegations set forth in the petition. In such case the study shall proceed only after the court after hearing has made a finding as to the allegations of the petition.

Except where the requirement is waived by the judge, social studies shall also be made in proceedings to decide disputed or undetermined legal custody and in custody disputes arising out of a divorce action. In all other awards of custody arising out of a divorce action, including those where an agreement with respect to custody has been made by the parties, and in any other case or class of cases, the judge may order a social study when he has reason to believe such action is necessary to assure adequate protection of the minor or of any other person involved in the case. The judge by special order or by rule of court may require a social study in support cases covering financial ability and other matters pertinent to making an order of support. The use of such studies in custody and support hearings shall be subject to the applicable provisions of section 571-41.

Social studies required by this section shall be presented to and considered by the judge prior to making disposition.

The judge may order and use a presentence investigation with respect to any criminal action under the jurisdiction of the court in accordance with the existing provisions of the law with respect to the making and use of such studies."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 116

H. B. NO. 1952-72

A Bill for an Act Relating to Bicycles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many bicycles are purchased during the month of December and are ridden during that month. When the owners of these bicycles license their bicycles in January of the following year, they are forced to pay double taxes, once for the month of December and once for the year beginning in January since there are two different years involved. The legislature further finds that this is a burden that owners of bicycles should not have to bear. Therefore the purpose of this Act is to allow

*Edited accordingly.

those persons purchasing bicycles during the month of December to obtain a license during the month of December or later for the succeeding year without having to pay for two years.

SECTION 2. Section 249-14, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 249-14. Bicycle tax. All bicycles used for the conveyance of persons shall be subject to an annual tax of \$1 each to be paid by the owners thereof to the county treasurer or his deputy. This tax shall become due and payable on January 1 and shall be delinquent on March 1 of each year; provided that any bicycle initially acquired after November 30 of a calendar year, previously not registered, shall be exempt from taxation until January 1 of the next calendar year, provided that the tax for the next calendar year shall be paid before January 1. Upon receipt of the tax, the treasurer or his deputy shall number and register each bicycle, for which the tax is paid, in the owner's name and furnish the owner with a metallic tag for the bicycle with number and year marked thereon, charging therefor the sum of 10 cents, which tag the owner shall attach to the bicycle. The metallic tags shall be in such form as the treasurer of the county shall from time to time prescribe. It shall be the duty of the council of each county to purchase a sufficient number of such tags for use therein."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 117

H. B. NO. 2161-72

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The sum of \$246,213 appropriated by Act 210, Session Laws of Hawaii 1971, to the University of Hawaii for the fiscal year 1971-1972 for the Center for Cross-Culture Training and Research is reappropriated for the fiscal biennium 1971 to 1973 to be expended by the University for non-recurring expenses to improve educational resources at the University of Hawaii at Hilo, including in particular, but not limited to, acquisition of books and audio-visual equipment and other educational equipment and resources.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-2, Hawaii Revised Statutes, is amended to read:

"Sec. 269-2. Public utilities commission; number, appointment of commissioners. There shall be a public utilities commission of five members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26-34. No member of the commission shall be a salaried officer or employee of the State. Two members shall be appointed from the city and county of Honolulu and one from each of the counties of Hawaii, Maui, and Kauai. One of the city and county of Honolulu members shall be the chairman of the commission. Each of the members shall receive compensation at the rate of \$50 per day while actually engaged in the performance of his duties as commissioner, and such reasonable traveling expenses as may be incurred in the discharge of his duties. No person owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility shall be appointed to or hold an office on the commission, or be appointed or employed by the commission."

SECTION 2. Section 269-3, Hawaii Revised Statutes, is amended to read:

"Sec. 269-3. Employment of assistants. The director of regulatory agencies may appoint and employ such clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission, as may be necessary, and define their powers and duties. The director may appoint a chief administrator who shall be exempted from chapter 76. The commission may appoint an attorney who shall be exempt from the provisions of chapter 76, Hawaii Revised Statutes, and who shall act as attorney for the commission. The attorney general and his deputies shall act as attorneys for the staff of the commission."

SECTION 3. Section 103-3, Hawaii Revised Statutes, is amended to read:

"Sec. 103-3. Employment of attorneys. No department of the State other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provisions shall not apply:

- (1) To the Hawaii housing authority or the Public Utilities Commission;
- (2) To any court or judicial or legislative officer of the State;
- (3) To the legislative reference bureau;
- (4) To such compilation commission as may be constituted from time to time;

- (5) In the event the attorney general, for reasons deemed by him good and sufficient, declines such representation or counsel, or approves such department's expenditures; provided the governor thereupon waives the provision of this section.

For the purposes of this section the term 'department of the State' means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full time basis shall become a deputy attorney general."

SECTION 4. There is appropriated from the general revenues of the State, not otherwise appropriated, the sum of \$10,000, or so much thereof as may be necessary, for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect on July 1, 1972.

(Approved May 25, 1972.)

ACT 119

S. B. NO. 1035

A Bill for an Act Relating to Bank Mergers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 404-4, Hawaii Revised Statutes, is amended to read as follows:

"Section 404-4. Merger procedure; resulting state bank. (a) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

- (1) The name of each merging bank and location of each office;
- (2) With respect to the resulting bank:
 - (A) The name and location of the principal and the other offices;
 - (B) The name and residence of each director to serve until the next annual meeting of the stockholders;
 - (C) The name and residence of each officer;
 - (D) The amount of capital, the number of shares and the par value of each share;
 - (E) Whether preferred stock is to be issued and the amount, terms, and preferences;
 - (F) The amendments to its charter and bylaws;
- (3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank or of distributing cash or any other property, in whole or in part, in lieu of or par-

*Edited accordingly.

tially in lieu of shares of the resulting state bank to stockholders of the merging banks or any class of them;

- (4) A statement that the agreement is subject to approval by the director of regulatory agencies and by the stockholders of each merging bank;
- (5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of merging banks;
- (6) Such other provisions as the director requires to enable him to discharge his duties with respect to the merger.

(b) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board, and together with evidence of proper action by the board of directors of any merging national bank.

(c) Within thirty days after receipt by the director of the papers specified in subsection (a) the director shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The director shall approve the agreement if it appears that:

- (1) The resulting state bank meets the requirements of state law as to the formation of a new state bank;
- (2) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;
- (3) The agreement is fair;
- (4) The merger is not contrary to the public interest.

(d) If the director disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate the objections.

(e) Nothing in this chapter shall be construed to require the approval by any state authority for any state bank to convert into and merge or consolidate with national banking associations as provided by federal law."

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 120

S. B. NO. 1340-72

A Bill for an Act Relating to Temporary Disability Insurance and Amending Chapter 392, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

*Edited accordingly.

SECTION 1. Chapter 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 392- Notice of denial. No employer or insurer shall deny disability benefits to an employee without first submitting a copy of the notice of denial to the department. The department shall review the denial within ten days of the receipt of the notice. If the department finds the denial erroneous, without proper legal basis, or without sufficient evidence to support it, the department shall request the employer or insurer to reconsider its action in denying disability benefits. If upon reconsideration the employer or insurer again decides to deny disability benefits, the employee and the department shall be so notified. The employee shall have the right to appeal the denial of disability benefits."

SECTION 2. This Act shall take effect on July 1, 1972.

(Approved May 25, 1972.)

ACT 121

S. B. NO. 1341-72

A Bill for an Act Relating to Payment of Wages and Amending Chapter 388, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 388-6, Hawaii Revised Statutes, is hereby amended to read:

"Sec. 388-6 Withholding of wages. No employer may deduct or retain any part or portion of any compensation earned by any employee except where required by federal or state statute or by court process or when such deductions are authorized in writing by the employee, provided that deductions for the following may not be so authorized or collected:

- (1) Fines;
- (2) Cash shortage in a common money till, cash box, or register used by two or more persons;
- (3) Breakage;
- (4) Losses due to acceptance by an employee of checks which are subsequently dishonored if employee is given discretion to accept or reject any check;
- (5) Losses due to defective or faulty workmanship, lost or stolen property, damage to property, default of customer credit, or nonpayment for goods or services received by customer if such losses are not attributable to employee's wilful or intentional disregard of employer's interest; or
- (6) Medical or physical examination or medical report expenses which accrue due to services rendered to an employee or prospective employee, where such examination or report is requested or required by the employer or prospective employer or required by any law or regulation of federal, state or local governments or agencies thereof."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 122

S. B. NO. 1342-72

A Bill for an Act Relating to Payment of Wages and Amending Chapter 388, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 388-1, Hawaii Revised Statutes, is hereby amended to read:

"Sec. 388-1 Definitions. As used in this chapter:

- (1) 'Director' means the director of labor and industrial relations.
- (2) 'Employ' includes to permit or suffer to work.
- (3) 'Employer' includes any individual, partnership, association, joint-stock company, trust, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, employing any person, but shall not include the State or any political subdivision thereof or the United States.
- (4) 'Employee' includes any person suffered or permitted to work.
- (5) 'Wages' means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. It shall include the reasonable cost, as determined by the director under chapter 387, to the employer of furnishing an employee with board, lodging, or other facilities if such board, lodging, or other facilities are customarily furnished by the employer to his employees but shall not include tips or gratuities of any kind, provided that for the purposes of section 388-6, 'wages' shall include tips or gratuities of any kind."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Examinations to Practice Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 459-7, Hawaii Revised Statutes, is amended to read:

"Sec. 459-7 Examination; certificate of registration. Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry shall, before beginning or continuing such practice, upon presentation of satisfactory evidence, verified by oath, that he is at least twenty-one years of age, is a citizen of the United States, has been a resident in the State for at least one year, is a graduate of a high school, is a graduate of an American optometric college, school, or university recognized and approved by the board of examiners in optometry and the American optometric association, take an examination before the board upon complying with the following requirements:

Applications for examination shall be made out and filed in writing with the secretary of the board and each application shall be accompanied by a fee of \$30, which shall be retained by the board.

Each applicant shall file, in writing, with the secretary at least thirty days prior to the date selected by the board for such examination, the following credentials:

- (1) A diploma or certificate of graduation from an American optometric college or school recognized and approved by the board.
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the board of optometric examiners, and the secretary of the state optometric association of that state;
- (3) An unretouched unmounted recent photograph of the applicant.

The applicants shall be given due notice of the date and place of examination. No applicant who fails to obtain an average of seventy per cent in every subject upon which he is examined shall be passed by the board. If an applicant, because of his failure to pass an examination is refused a license, he shall, within one year, be permitted to take a second examination without additional fee. If an applicant fails the second time, he shall be required to file a new application and to pay an additional fee of \$30. If an applicant fails the third time or any subsequent time, he shall be required to file a new application and to pay an additional fee of \$30 and to take a complete examination.

An appeal to the circuit court, of the circuit within which the applicant resides, may be taken from any decision of the board by any applicant who is refused or denied a certificate.

Every candidate who passes an examination, satisfactorily to the board, shall be registered as possessing the qualifications required by this chapter, and shall receive from the board a proper certificate of registration. Before any certificate is issued it shall be numbered and recorded on a book kept by the secretary of the board of examiners in optometry.

Each registered optometrist shall pay an annual license fee of \$7.50 between December 1 and December 31 of each year, to the treasurer of the board for a renewal of his registration certificate for the year next following. The failure of any regular licensed optometrist to pay his annual license fee in advance on or before December 31 of each year, during the time his license remains in force, shall ipso facto, work a revocation and forfeiture of his license. Any person whose license is so revoked and forfeited shall pay a penalty of \$25 for the restoration of his license, and, in addition, all delinquent annual license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within three years, the license shall not be restored unless the regular examination for applicants is passed by such person.

Each registered optometrist shall submit proof to the board of examiners that he did, on or before December 31 of each year, during the time his license remains in force, meet the requirement of continuing education in programs as set and approved by the board. The board shall establish such rules and regulations for the certification of the administration of the continuing education program."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 124

S. B. NO. 1878-72

A Bill for an Act Relating to Elevator Mechanics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448H-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 448H-1 Definitions. As used in this chapter:

- (1) 'Board' means the elevator mechanics licensing board created by this chapter.
- (2) 'Elevator mechanic' means any person who engaged in the construction, reconstruction, alteration, maintenance, mechanical, or electrical work or adjustments of any elevator, dumbwaiter, escalator, moving walk or ramp, manlift including any construction, reconstruction, alteration, or adjustment of the structure or facility of which the same may be a part or to which the same may be attached, necessary for proper completion of the work on the elevator, dumbwaiter, escalator, moving walk or ramp, manlift.

*Edited accordingly.

- (3) 'Apprentice elevator mechanic' means any person who is in training to acquire the skill to become an elevator mechanic and who is required to work for at least two years under the supervision of an elevator mechanic duly licensed under the provision of section 448H-6."

SECTION 2. Section 448H-7, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 448H-7 Temporary permit. The board may issue a temporary permit to any person who has qualified as an elevator mechanic in another state with standards substantially equal to those of this chapter and who possesses skills or training not available in the State; provided that the board shall not register any such person as an apprentice elevator mechanic. The board shall, by rules and regulations, establish the terms of the temporary permit.

SECTION 3. Statutory material to be repeated is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 25, 1972.)

ACT 125

H. B. NO. 2050-72

A Bill for an Act Relating to Recording and the Requirements Therefor, Amending Chapter 502 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 502 of the Hawaii Revised Statutes is amended as follows:

(a) Section 502-24 is amended by deleting from the third and fourth lines the words and punctuation " , if land within the city and county is involved," and by deleting from the fourth line the words "city and county of Honolulu" and inserting in lieu thereof "county".

(b) Section 502-33 is amended by deleting from the third and fourth lines the words and punctuation "or a certificate of entry for the purpose of foreclosure under mortgage,"; by inserting in the fifth line preceding the word "mortgage" the word "a"; by deleting from the fifth and sixth lines the words and punctuation "or an affidavit of entry,"; by deleting from the sixth line the words "an execution" and inserting in lieu thereof "a writ"; and by deleting from the sixth line the word "decree" and inserting in lieu thereof "judgment".

*Edited accordingly.

(c) Section 502-43 is amended by deleting from the fifth line the word "Island" and inserting in lieu thereof "County", and by deleting from the sixth line the abbreviation "A.D." which precedes the designation of the year.

(d) Section 502-50 is amended by deleting from the twelfth line the word "any" and inserting in lieu thereof "the"; by deleting from the thirteenth line the words "a court of record" and inserting in lieu thereof "the land court or a judge of a circuit court"; by deleting from the fifteenth line the words "of record"; by inserting in the sixth line of subsection (b), preceding the words "may certify", the words "or a judge of a circuit court"; and by amending the second sentence of subsection (c) to read as follows: "The proceeding shall be brought in a circuit court or the land court".

(e) Section 502-73 is amended by deleting from the first and second lines the words "several courts of record" and inserting in lieu thereof "circuit courts".

(f) Section 502-84 is amended by deleting from the first line the words and punctuation "indentures of apprenticeship,"; by deleting the comma from the second line; and by deleting from the next to the last line the word "and" and inserting in lieu thereof "or".

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect July 1, 1973.

(Approved May 25, 1972.)

ACT 126

H. B. NO. 1658-72

A Bill for an Act Relating to Gubernatorial Transition.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

"CHAPTER

GUBERNATORIAL TRANSITION

Sec. -1 Declaration of purpose. The legislature declares it to be the purpose of this chapter to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a governor and the inauguration of a new governor. The interest of the State requires that such transitions be accomplished so as to assure continuity in the conduct of the affairs of the state government. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the State and its people. Accordingly, it is the intent of the legislature that appropriate actions be authorized and taken to avoid or minimize

any disruption. In addition to the specific provisions contained in this chapter directed toward that purpose, it is the intent of the legislature that all officers of the state government so conduct the affairs of the state government for which they exercise responsibility and authority as (1) to be mindful of problems occasioned by transitions in the office of governor, (2) to take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power, and (3) otherwise to promote orderly transitions in the office of governor.

Sec. -2 Definition. "Governor-elect" means the person who is the apparent successful candidate for the office of governor, as ascertained by the chief election officer following the general election.

Sec. -3 Expenditures authorized; limitations. (a) The comptroller shall provide, upon request, to each governor-elect, for use in connection with his preparations for the assumption of official duties as governor, necessary services and facilities, including:

- (1) Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies as determined by the comptroller after consultation with the governor-elect, within the state capitol complex;
- (2) Payment of the compensation of members of office staffs designated by the governor-elect at rates determined by him; provided that any employee of any agency of the state government may be detailed to such staffs on a reimbursable or nonreimbursable basis; and while so detailed such employee shall be responsible only to the governor-elect for the performance of his duties; and provided that any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law to the contrary, persons receiving compensation as members of office staffs under this paragraph, other than those detailed from agencies, shall not be held or considered to be employees of the state government except for purposes of the public employees' retirement system;
- (3) Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the governor-elect at rates not to exceed \$100 per diem for individuals;
- (4) Payment of travel expenses and subsistence allowances, not to exceed that authorized for other State employees, including rental by the state government of hired motor vehicles, found necessary by the governor-elect, as authorized for persons employed intermittently or for persons serving without compensation, as may be appropriate;
- (5) Communication services found necessary by the governor-elect;
- (6) Payment of expenses for necessary printing and binding;

Each governor-elect shall be entitled to conveyance of all mail, including air-mail, sent by him in connection with his preparations for the assumption of official duties as governor.

(b) The comptroller shall expend no funds for the provision of services and facilities under this chapter in connection with any obligations incurred by the governor-elect before the day following the date of the general elections.

(c) In the case where the governor-elect is the incumbent governor, there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this chapter, and any funds appropriated for such purposes shall be returned to the general fund of the state.

Sec. -4 Duties of outgoing governor. It shall be incumbent upon the outgoing governor to:

- (1) Provide channels enabling the governor-elect to
 - (A) Inform career civil servants of his program goals and new policies;
 - (B) Effect communication channels with the administration of the governor. The governor-elect may obtain information from the governor's administration by circulating questionnaires or by other means. Information sought may include any questions which will effect the intent of the legislature in enacting this legislation, as expressed in section -1. Such contacts may also include inquiries designed to elicit descriptions of programs, recommendations, and justifications for elimination, curtailment, or expansion of services, projections of future developments or needs within program areas, recommendations for administrative changes, comments upon anticipated federal developments which might have program or budgetary implications for state programs, and elaboration of procedural details.
- (2) Direct that official documents, vital information, and procedural manuals be given to the governor-elect upon his request.

Sec. -5 Budgetary information to be given governor-elect. If the governor under whose supervision the budget report has been prepared will be succeeded in office in December next following:

- (1) The director of finance shall make available to the governor-elect so much as he requests of the information upon which the governor's budget report is based, and upon completion of the governor's budget report shall supply the governor-elect with a copy thereof. The director of finance shall also make available all facilities reasonably necessary to permit him to review and familiarize himself with the governor's budget report.
- (2) After a review of the governor's budget, the governor-elect may prepare revisions and additions thereto. The director of finance shall assist, upon request, in the preparation of such revisions or additions.

- (3) The director of finance shall have as many copies of the revised budget report printed as the governor-elect requests.
- (4) The director of finance shall compile a summary of the revised budget report containing the revenue and expenditure recommendations of the governor-elect and if requested by the governor-elect may transmit a copy of the revised budget report to each member of the legislature.
- (5) Upon request, the director of finance shall distribute copies of the revised budget report, to public libraries, schools, and state officials. The director of finance shall make a reasonable number of copies of the revised budget report available to the general public.

Sec. -6 Budget request. The governor shall include in the budget transmitted to the legislature, for each fiscal year in which his regular term of office will expire, a request for appropriation of \$50,000 for carrying out the purposes of this chapter."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 26, 1972.)

ACT 127

H. B. NO. 2194-72

A Bill for an Act Relating to Charges on Loans made by Industrial Loan Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 408-15(j), Hawaii Revised Statutes, is amended to read:

"Sec. 408-15(j). As an alternative to the interest authorized by subsection (b), an industrial loan company may contract for and receive interest at a rate not exceeding one and one-half per cent per month on the unpaid principal balance of a loan, for a loan period of no longer than six years."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 26, 1972.)

ACT 128

H. B. NO. 2208-72

A Bill for an Act Relating to the Use of Public School and Park Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The State Department of Education and the appropriate county agencies may establish and regulate programs of after-school and

*Edited accordingly.

weekend community-school activities for children, including but not limited to day-care programs, arts and crafts, hula, ukulele, and other educational or recreational projects, wherever feasible, at public school and public park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled, in furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapters 76 and 77, as may be necessary for carrying out the purposes of this Act, and to regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted shall, while engaged in the performance of duty under this Act, be deemed state employee or employees of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of such persons.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 26, 1972.)

ACT 129

S. B. NO. 174

A Bill for an Act Relating to Public Officers and Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-59, Hawaii Revised Statutes, is amended to read:

"Sec. 88-59 Acquisition of credit for previous service. Under such rules and regulations as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to his last becoming a member which is not otherwise credited to him, for which he claims prior service credit, and also a statement of such services for which he claims membership service credit and for which he agrees to have additional deductions made from his compensation or to make a lump sum payment as hereinafter described.

After the filing of the statement, the board shall verify the service therein claimed and determine the service credit allowable therefor. Verified prior service shall be credited forthwith. Verified membership service shall be paid for by the member in any one of the following methods, at his option:

- (1) By deductions from his compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable; or
- (2) By deductions from his compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable; or
- (3) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to his monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable.

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of his accumulated contributions.

Membership service credit in addition to any other service credited to the member shall be allowed the member for the period for which the deductions from compensation or lump sum payment have been made as hereinabove described.

No post retirement contributions shall be required for any service being claimed which is prior to July 1, 1961.

Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a period of service as a member of the legislature during which he received a retirement allowance shall, in addition to complying with the provisions of this section, refund while a reenrolled active member the retirement allowance received during the period of a legislative service."

SECTION 2. New material is underscored. Material to be repealed is bracketed. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 26, 1972.)

ACT 130

S. B. NO. 1988-72

A Bill for an Act Relating to the Progressive Neighborhoods Law and Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings and Purpose.** The progressive neighborhoods program has been successful, within the limits of program resources, in initiating and testing new or improved activities designed to alleviate adverse conditions in neighborhoods characterized by composite economic, health, social and physical problems. The progressive neighborhoods program, having proved its usefulness, is now an accepted part of Hawaii's state government and has the stability and resources to persevere over time due to state support.

The model cities program, dependent on federal funds and managed by the city and county of Honolulu, also has met with many successes in initiating and testing imaginative and innovative approaches to improve the quality of life of residents of two disadvantaged neighborhoods: Kalihi-Palama and Waianae-Nanakuli. Model cities has a finite life span of five years measured in terms of federal funding. At the end of five years, model cities activities are supposed to have either proven their value conclusively enough to gain funding support from sources other than model cities or terminate for lack of support. The Honolulu model cities program is now into the third action year.

*Edited accordingly.

Many model cities activities complement the efforts of the progressive neighborhoods program. Some model cities projects would be more appropriately located as part of the state government than as part of local government. It is possible that the State is the most logical entity to assume some successful model cities projects when federal funding ceases. This possibility deserves careful study and planning before the State makes any commitments.

It is the purpose of this Act to initiate and provide resources for a study of model cities projects to determine which projects, if any, should be incorporated into the progressive neighborhoods program or elsewhere into the organizational pattern of state government.

SECTION 2. Study Authorized. The governor's office is authorized to employ a director to conduct the study of model cities projects and to provide necessary supportive secretarial services. The director and any secretarial personnel engaged for the study shall be hired on contract for the duration of the study, but in no event shall their employment continue beyond January 31, 1973.

The director shall be responsible for the conduct of the study which will include a review of each model cities project. Among other matters, the study shall:

- (1) Evaluate projects in terms of their contributions to improving the quality of life of target area residents;
- (2) Determine the desirability of continuing projects once federal model cities funds terminate;
- (3) Examine possible organizational arrangements within state government for projects recommended for continuation and propose the most suitable arrangements;
- (4) Estimate the costs of continuing projects under new organizational arrangements and explore possibilities of reducing costs; and
- (5) Propose a work plan and timetable for transferring projects from model cities to other organizations of state government.

Alternatively, the governor's office may contract with the resident research and planning centers in Kalihi-Palama and Waianae-Nanakuli to conduct all or parts of the study.

SECTION 3. Report. The governor's office shall submit copies of the completed study report to the legislature at least twenty days before the convening of the 1973 regular session.

SECTION 4. Appropriations. There is appropriated to the governor's office out of the general revenues of the State the sum of \$27,000, or so much thereof as may be necessary, for the purpose of conducting the study proposed in this Act.

SECTION 5. Effective date. This Act shall take effect on July 1, 1972.
(Approved May 26, 1972.)

A Bill for an Act Relating to an International Marine Exposition in Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and declaration. The legislature hereby finds and declares that: (1) the report "Hawaii and The Sea" recommends that an international marine exposition be held in the State of Hawaii; (2) an international marine exposition would serve to inform, on a first hand basis, members of private industry, government officials from various nations, and others of the marine assets of the State of Hawaii; (3) the legislature appropriated \$30,000 by way of Act 137, Session Laws of Hawaii, 1970, for the investigation and preliminary planning of an international marine exposition for Hawaii; (4) the preliminary investigation has been completed and indicates that such an exposition is feasible, provided proper planning is initiated and federal and local support (both financial and moral) is secured; (5) the potential economic, scientific and environmental benefits of a successful international marine exposition are many; (6) Hawaii has an obligation to celebrate its own bicentennial. Such celebration should most appropriately follow the American Bicentennial by featuring Hawaii's new horizons and challenges and their impact on the nation and on the nations of the Pacific. One of the subsidiary themes of the American Bicentennial, that of many races and creeds contributing to the growth of a great nation, is particularly appropriate to Hawaii and shall result in national focus on Hawaii in 1976, which will have carryover to 1978; (7) considerable conceptual development for a marine exposition has already taken place; (8) space and concept choices must be made for the exposition and its siting prior to the end of calendar year 1972; (9) a bicentennial marine exposition commission should be appointed to begin planning as soon as feasible in 1972; (10) subsequently and as a result of the efforts of the commission, an independent non-profit corporation should be formed, and this corporation working closely with the commission should complete overall planning and development of the bicentennial marine exposition so that compliance with federal international exposition regulations and Bureau of International Exposition regulations may be accomplished.

SECTION 2. Creation of bicentennial international exposition commission. There is established a commission to be known as the Hawaii bicentennial international marine exposition commission which shall have charge of all arrangements for the holding of an international marine exposition in the State of Hawaii, to coincide with the bicentennial commemoration of the discovery of Hawaii by Captain James Cook. The commission shall be placed within the office of the governor. It shall not continue beyond December 31, 1979.

SECTION 3. Membership, compensation. The commission shall consist of eleven members who shall be appointed by the governor with the advice and consent of the Senate as provided by Section 26-34, Hawaii Revised Statutes. Four of the members shall be selected from each of the counties, including the City and County of Honolulu, three shall be selected at large.

The director of transportation, the director of planning and economic development, the chairman of the board of land and natural resources, and the marine affairs coordinator shall be ex officio members of the commission. The members shall receive no compensation for their services but shall be reimbursed for travel and other necessary expenses in the performance of their duty.

SECTION 4. Powers and duties. The commission shall:

- (1) Make a detailed study to implement the holding of a proposed international marine exposition in the State of Hawaii in the latter half of 1977, or the first half of 1978, and in either event encompassing January, 1978.
- (2) Choose an exposition site or sites and concept prior to the end of calendar year 1972.
- (3) Formulate and submit to the governor plans for an independent non-profit corporation which will assist the commission in the planning and development of the international marine exposition.
- (4) Coordinate and direct the planning and promotion of the international marine exposition.
- (5) Insure compliance with the Federal international exposition regulations and Bureau of International Exposition regulations.
- (6) Direct and coordinate events during the international marine exposition in 1977 and 1978.

SECTION 5. Annual reports. The commission shall submit to the legislature by February 1 of each year a report of all activities, including an accounting of all property and money received and disbursed.

SECTION 6. Employees. The commission may engage employees necessary to perform its duties, including administrative personnel and an executive secretary of the commission who shall serve as its administrative head.

SECTION 7. Effective date. This Act shall take effect upon its approval.

(Approved May 26, 1972.)

ACT 132

S. B. NO. 1502-72

A Bill for an Act Relating to a Residential Landlord-Tenant Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

RESIDENTIAL LANDLORD-TENANT CODE

PART I. GENERAL PROVISIONS AND DEFINITIONS

Sec. -1 Short title. This chapter shall be known and may be cited as the Residential Landlord-Tenant Code.

Sec. -2 Purposes; rules of construction. (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

- (1) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants of dwelling units;
- (2) To encourage landlords and tenants to maintain and improve the quality of housing in this State; and
- (3) To revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is primarily contractual in nature.

Sec. -3 Supplementary general principles of law, other laws, applicable. (a) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(b) Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.

(c) Nothing in this chapter shall be applied to interfere with any right, obligation, duty, requirement, or remedy of a landlord or tenant which is established as a condition or requirement of any program receiving subsidy from the government of the United States. To the extent that any provision of this chapter is inconsistent with such a federal condition or requirement then as to such subsidized project the federal condition or requirement shall control.

Sec. -4 Construction against implicit repeal. This chapter being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. -5 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. -6 Territorial application. This chapter applies to rights, remedies, and obligations of the parties to any residential rental agreement wherever made of a dwelling unit within this State.

Sec. -7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services.

- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii.
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser.
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization.
- (5) Transient occupancy on a day to day basis in a hotel or motel.
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord.
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease.

Sec. -8 Definitions. As used in this chapter, unless the context clearly requires otherwise:

- (1) "Action" with reference to a judicial proceeding includes recoupment, counterclaim, setoff, and any other proceedings in which rights are determined, including an action for possession.
- (2) "Apartment building" means a structure containing one or more dwelling units, except:
 - (A) A single-family residence, or
 - (B) A structure in which all tenants are roomers or boarders.
- (3) "Dwelling unit" means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.
- (4) "Landlord" means the owner, lessor, sub-lessor assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord.
- (5) "Owner" means one or more persons, jointly or severally, in whom is vested:
 - (A) All or any part of the legal title to property; or
 - (B) All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and
 includes a mortgagee in possession.
- (6) "Person" includes an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- (7) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility whose use is promised to the tenant.
- (8) "Rental agreement" means all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any

other provisions concerning the use and occupancy of a dwelling unit and premises.

- (9) "Roomer" or "boarder" means a tenant occupying a dwelling unit:
 - (A) Which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or stove,
 - (B) In a building where one or more such major facilities are supplied to be used in common by the occupants of the tenant's dwelling unit and by the occupants of one or more other dwelling units, and
 - (C) In a building in which the landlord resides.
- (10) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has a direct access to a street or thoroughfare and does not share hot water equipment or any other essential facility or service with any other dwelling unit.
- (11) "Tenant" means any person who occupies a dwelling unit for dwelling purposes under a rental agreement.

Sec. -9 Notice, notification, knowledge, etc. (a) A person has notice of a fact when:

- (1) He has actual knowledge of it; or
- (2) He has received a notice or notification of it; or
- (3) From all the facts and circumstances known to him at the time in question he has reason to know of it.

(b) A person knows or has knowledge of a fact when he has actual knowledge of it. The terms "discover" or "learn" or terms of similar import refer to knowledge rather than reason to know. The time and circumstances under which a notice or notification ceases to be effective are not determined by this chapter.

(c) A person notifies or gives a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when:

- (1) It comes to his attention; or
- (2) It is delivered at the place of business through which the rental agreement was made or at any place held out as the place for receipt of such communications.

(d) Notice, knowledge, or a notice or notification received by a person other than an individual is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction or from the time it should have been brought to his attention, whichever time is earlier.

Sec. -10 Duties; obligation of good faith. Every duty imposed by this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Sec. -11 Time; reasonable time. (a) Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of the action.

PART II. RENT

Sec. -21 Rent. (a) The landlord and tenant may agree to any consideration, not otherwise prohibited by law, as rent. In the absence of such agreement, and subject to section -71(c) in the case of holdover tenants, the tenant shall pay to the landlord the fair rental value for the dwelling unit.

(b) Rents shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, and for longer terms in equal monthly installments payable at the beginning of each month.

(c) Except as otherwise provided in subsection (b), rent shall be uniformly apportionable from day to day.

Sec. -22 Term of rental agreement. The landlord and tenant may agree in writing to any period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month or, in the case of boarders, week to week.

PART III. LIMITATIONS ON RENTAL AGREEMENTS AND PRACTICES

Sec. -31 Waiver; agreement to forego rights; settlement of claims. (a) Except as otherwise provided in this chapter, a tenant or landlord may not waive or agree to forego rights or remedies under this chapter.

(b) A claim by a tenant against a landlord for violation of this chapter or a claim by a landlord against a tenant for default or breach of duty imposed by this chapter, if disputed in good faith, may be settled by agreement.

(c) A claim, whether or not disputed, against a tenant or landlord may be settled for less value than the amount claimed.

(d) A settlement in which the tenant or landlord waives or agrees to forego rights or benefits under this chapter is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the tenant or landlord, any deception or coercion practiced against him, the nature and extent of the legal advice received by him, and the nature and value of the consideration are relevant to the issue of unconscionability.

Sec. -32 Separation of rents and obligations to property forbidden. Any agreement, conveyance, or trust instrument which authorizes a person other than the beneficial owner to act as the landlord of a dwelling unit shall operate, regardless of its terms, to authorize and require such person to use rents to conform with this chapter and any other law, code, ordinance, or regulation concerning the maintenance and operation of the premises.

Sec. -33 Landlord's waiver of liability prohibited. A provision in a rental agreement exempting or limiting the landlord, or requiring the tenant to indemnify the landlord, from liability for damages to persons or property caused by or resulting from the acts or omissions of the landlord, his agents, servants, or employees, in or about the dwelling unit covered thereby or in or about the premises of which it is a part is void.

Sec. -34 Authorization to confess judgment prohibited. A tenant may not authorize any person to confess judgment on a claim arising out of a rental agreement of any dwelling unit. An authorization in violation of this section is void.

Sec. -35 Attorney's fees. A rental agreement may provide for the payment by the tenant of the costs of a suit, for unpaid rent, if any, and reasonable attorney's fees not in excess of twenty-five per cent of the unpaid rent after default and referral to an attorney not a salaried employee of the landlord or his assignee. A provision in violation of this section is unenforceable.

Sec. -36 Effect of termination. Except as otherwise provided in this chapter, whenever a landlord or tenant exercises a right to terminate a rental agreement, the obligations of each party to the rental agreement shall cease upon the final discharge of all obligations imposed by the rental agreement and by this chapter.

Sec. -37 Subleases and assignments. (a) Unless otherwise agreed to in a written rental agreement and except as otherwise provided in this section, the tenant may sublet his dwelling unit or assign the rental agreement to another without the landlord's consent.

(b) Subsection (a) does not apply to a tenant of a dwelling unit administered, owned, or subsidized by the United States, the State, a county, or any agency thereof.

(c) A written rental agreement may provide that the tenant's right to sublet his dwelling unit or assign the rental agreement is subject to the consent of the landlord.

PART IV. LANDLORD OBLIGATIONS

Sec. -41 Landlord to supply possession of dwelling unit. The landlord shall, at the beginning of the agreed term, deliver possession of the dwelling unit to the tenant in the agreed condition unless otherwise agreed prior to delivery of possession. The landlord may bring an action for possession against any person wrongfully in possession including a holdover tenant.

Sec. -42 Landlord to supply and maintain fit premises.

(a) The landlord shall at all times during the tenancy:

(1) Comply with all applicable provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing main-

tenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;

- (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
- (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
- (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by him in good working order and condition, subject to reasonable wear and tear;
- (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and
- (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

(b) The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, and minor remodeling only if:

- (1) The agreement of the landlord and tenant is entered into in good faith and is not for the purpose of evading the obligations of the landlord;
- (2) The work to be performed by the tenant is not necessary to cure non-compliance by the landlord with section 42(a)(1); and
- (3) The agreement of the landlord and tenant does not diminish the obligations of the landlord to other tenants.

Sec. 43 Rental agreement, disclosure. (a) On each written rental agreement, the landlord shall disclose:

- (1) The name and usual address of each person authorized to manage the premises; and
- (2) The name and usual address of each person who is an owner of the premises or who is authorized to act for and on behalf of the owner for the purposes of service of process and of receiving and receipting rents, notices, and demands.

(b) In the case of an oral rental agreement the landlord shall, on demand, furnish the tenant with a written statement containing the information specified in subsection (a).

(c) Any owner or landlord not dealing directly with the tenant shall be responsible for compliance with this section by an owner or landlord dealing directly with the tenant and shall be estopped from any objection to a failure to serve process upon an owner or landlord in any proceeding arising under this chapter when such failure is due to failure to comply with this section. The owner or landlord who deals directly with the tenant and fails to comply with this section shall be deemed an agent of every other landlord under the rental agreement for performing the obligations of the landlord under this chapter and under the rental agreement.

Sec. -44 Security deposits. (a) As used in this section "security deposit" means money deposited by or for the tenant with the landlord to be held by the landlord to:

- (1) Remedy tenant defaults for damages resulting from failure to comply with section -51(1) or (6), for failure to pay rent due, or for failure to return to the landlord the key or keys of the dwelling unit at the termination of the rental agreement;
- (2) Clean the dwelling unit or have it cleaned at the termination of the rental agreement so as to place the condition of the dwelling unit in as fit a condition as that which the tenant entered into possession of the dwelling unit; and
- (3) Compensate for damages caused by a tenant who wrongfully quits the dwelling unit.

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) above and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy, even if the security deposits are commingled.

(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), he shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and he shall return the entire amount of the security deposit to the tenant.

(d) For the purposes of this section if a tenant is absent from the dwelling unit for a continuous period of thirty days or more without written notice to the landlord the tenant shall be deemed to have wrongfully quit the dwelling unit. In addition to any other right or remedy the landlord has with respect to such a tenant the landlord may retain the entire amount of any security deposit he has received from or on behalf of such tenant.

(e) The landlord shall not require the delivery of any postdated check or other negotiable instrument to be used for payment of rent.

(f) If the landlord who required and received a security deposit transfers his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the landlord's successor in interest is bound by this section.

(g) If the landlord and the tenant disagree about the right of the landlord to claim and retain the security deposit or any portion of it, either the landlord or the tenant may commence an action in the small claims division of the district court, as provided in chapter 633 and the rules of court thereunder, to adjudicate the matter.

(h) In any action in the small claims division of the district court pursuant to subsection (g) where the court determines that:

- (1) The landlord wrongfully and wilfully retained a security deposit or part of a security deposit, the court may award the tenant damages in an amount equal to three times the amount of the security deposit, or part thereof, wrongfully and wilfully retained and the cost of suit.
- (2) The landlord wrongfully retained a security deposit or part of a security deposit, the court shall award the tenant damages in an amount equal to the amount of the security deposit, or part thereof, wrongfully retained and the cost of suit.
- (3) The landlord was entitled to retain the security deposit or a part of it, the court shall award the landlord damages in an amount equal to the amount of the security deposit, or part thereof, in dispute and the cost of suit.
- (4) In any such action, neither the landlord nor the tenant may be represented by an attorney, including salaried employees of the landlord or tenant.

Sec. -45 Limitation of landlord and management liability.

(a) Unless otherwise agreed, a landlord who conveys premises which include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord, is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance, except that he remains liable to the tenant for any security deposit to which the tenant is entitled under section -44.

(b) Unless otherwise agreed, a person who is a manager of premises which include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the termination of his management.

PART V. TENANT OBLIGATIONS

Sec. -51 Tenant to maintain dwelling unit. Each tenant shall at all times during the tenancy:

- (1) Comply with all provisions primarily applicable to tenants of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, use, or appearance of the dwelling unit and that part of the premises which he occupies and uses;

- (2) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit;
- (3) Dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling unit or used by the tenant;
- (6) Not permit any person on the premises with his permission to wilfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing;
- (7) Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and
- (8) Comply with all obligations, restrictions, rules, and the like which are in accordance with section -52 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and protection of the persons of the landlord, other tenants, or any other person.

Sec. -52 Tenant to use properly. (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning his use, occupancy, and maintenance of his dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:

- (1) Such obligations or restrictions are brought to the attention of the tenant at the time of his entry into the rental agreement; or
 - (2) Such obligations or restrictions, if not so known by the tenant at the time of his entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of his bargain under the rental agreement, are consented to in writing by him.
- (b) No such obligation or restriction shall be enforceable against the tenant unless:
- (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
 - (2) It is reasonably related to the purpose for which it is established;
 - (3) It applies to all tenants of the property in a fair manner; and
 - (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply.
- (c) If the dwelling unit is an apartment in a horizontal property regime the tenant shall comply with the bylaws of the association of apartment-owners and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.

Sec. -53 Access. (a) The tenant shall not unreasonably withhold his consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply services as agreed; or exhibit the dwelling unit to prospective purchasers, mortgagees, or tenants.

(b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give the tenant at least two days notice of his intent to enter and shall enter only during reasonable hours.

(c) The landlord shall have no other right of entry, except by court order, unless the tenant appears to have abandoned the premises, or as permitted by section -70(b).

Sec. -54 Tenant to use and occupy. The landlord may require, in the rental agreement, that the tenant must notify the landlord of any anticipated extended absence from the dwelling unit no later than the first day of such absence.

Sec. -55 Tenant's responsibility to inform landlord. Any defective condition of the premises which comes to the tenant's attention, which he has reason to believe is unknown to the landlord, and which he has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable.

PART VI. REMEDIES AND PENALTIES

Sec. -61 Tenant's remedies for failure by landlord to supply possession. (a) If the landlord fails to put the tenant into possession of the dwelling unit at the beginning of the agreed term:

- (1) The tenant shall not be liable for the rent during any period he is unable to enter into possession;
- (2) At any time during the period the tenant is so unable to enter into possession he may notify the landlord that he has terminated the rental agreement; and
- (3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least
 - (A) The amount of abated rent; plus
 - (B) The amount claimed against the rent; or
- (4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession.

(b) In any district court proceeding brought by the tenant under this section the court may award the tenant substitute housing expenditures, reasonable court costs, and attorney's fees.

Sec. -62 Tenant's remedy of termination at beginning of term. If the landlord fails to conform to the rental agreement, or is in material non-compliance with section -42(a), the tenant may, on notice to the landlord, terminate the rental agreement and vacate the dwelling unit at any time during the first week of occupancy. The tenant shall retain such right to terminate beyond the first week of occupancy so long as he remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition which would justify termination by the tenant under this section.

Sec. -63 Tenant's remedy of termination at any time; unlawful removal or exclusion. (a) If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of his bargain under the rental agreement, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. The notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care by the tenant, a member of his family, or other person on the premises with his consent.

(b) If the condition referred to in subsection (a) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition.

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover damages sustained and the cost of suit, including reasonable attorney's fees. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or his assignee.

Sec. -64 Tenant's remedy of repair and deduction for minor defects. (a) If the landlord fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by sections 321-9 to 321-11 and 322-1 to 322-7, or by regulations thereunder, or as agreed to in a rental agreement, or if the landlord is in material noncompliance with section -42(a), and does not remedy the failure or noncompliance within thirty days after being notified in writing by the tenant to do so, or if the cost to the landlord of remedying the failure or noncompliance would exceed \$100, within thirty days after being notified in writing by the department of health that there is a health violation, the tenant may further notify the landlord in writing of his intention to correct the objectionable condition at the landlord's expense and:

- (1) Immediately do or have done the necessary work in a workmanlike manner; or
- (2) The tenant may submit to the landlord, at least thirty days before having the work done, a written signed estimate from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided the landlord

may require by a writing a reasonable substitute workman or substitute materials; and provided further that if the lower estimate exceeds \$100, the tenant shall not proceed to have done the necessary work until he obtains from the department of health a written statement that the objectionable condition in fact constitutes a violation of a health law or regulation, a copy of which statement shall be mailed by certified or registered mail by the department of health to the landlord.

(b) A tenant may deduct from his rent not more than \$100 for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(1) and may deduct not more than one month's rent for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(2), if he submits to the landlord copies of receipts amounting to at least the sum deducted.

(c) At the time the tenant initially notifies the landlord under subsection (a), the tenant shall list every condition that he knows or should know of noncompliance under subsection (a), in addition to the objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that he knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this section for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' rent.

(d) In no event may a tenant repair a dwelling unit at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of his family, or other person on the premises with his consent.

(e) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

Sec. -65 Tenant's remedies for fire or casualty damage. When the dwelling unit or any part of the premises or appurtenances reasonably necessary to the benefit and enjoyment thereof is rendered partially or wholly unusable by fire or other casualty which occurs without wilful fault on the part of the tenant or a member of his family, the tenant may:

- (1) Immediately quit the premises and notify the landlord of his election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting, but if the tenant fails to notify the landlord of his election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's quitting or impossibility of further occupancy; or
- (2) If continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or other casualty, in which case the tenant's liability for rent shall be no more than the fair

rental value of that part of the premises which he continues to use and occupy.

Sec. -66 Tenant's right to refund of rent, etc., on termination; return of security deposit. When a tenant exercises a right to terminate the rental agreement pursuant to section -62, -63, or -65 the landlord shall return to the tenant, not later than fourteen days after the termination, the amount of any advance rent paid apportionable to the remaining days of the term and the amount of any security deposit that the landlord is not authorized to retain pursuant to section -44. A return of advance rent or of a security deposit complies with the requirements of this section if it is mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement.

Sec. -67 Tenant's remedy for failure by landlord to disclose. If the landlord fails to comply with any disclosure requirement specified in section -43 within ten days after proper demand therefor by the tenant, the landlord shall be liable to the tenant for \$100 plus reasonable attorney's fees.

Sec. -68 Landlord's remedies for failure by tenant to pay rent. (a) A landlord or his agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession.

(b) A landlord or his agent may bring an action for rent alone at any time after he has demanded payment of past due rent and notified the tenant of his intention to bring such an action.

Sec. -69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use. (a) If the tenant is in material noncompliance with section -51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than thirty days after receipt of the notice, for the tenant to remedy the noncompliance:

- (1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section -51(1); or
- (2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property.

(b) The landlord may terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession for any material noncompliance with section -51 by a roomer or boarder if the roomer or boarder fails to comply within the time specified in the notice.

(c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's wilful or negligent failure to comply with his obligations under section -51.

Sec. -70 Landlord's remedies for absence, misuse, and abandonment. (a) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any damage resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for purposes of inspection, maintenance, and safe-keeping or for the purposes permitted by section -53(a).

(c) Unless otherwise provided in the rental agreement, use of the dwelling unit by the tenant for any other purpose than as his abode, or non-use of the dwelling unit, constitutes a breach of the tenant's obligations under section -52 and entitles the landlord to proceed as provided in section -72.

(d) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds his intention not to resume the tenancy, he shall be liable to the landlord for the lesser of the following amounts for such abandonment:

- (1) The entire rent due for the remainder of the term; or
- (2) All rent accrued during the period reasonably necessary to re-rent the dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amount calculated under paragraph (1) whether or not the landlord re-rents the dwelling unit.

Sec. -71 Termination of tenancy; landlord's remedies for holdover tenants. (a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination.

(b) When the tenancy is less than month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least ten days before the anticipated termination.

(c) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a) or (b), or by the exercise by the landlord of a right to terminate

given under this chapter, if the tenant continues in possession after the date of termination without the landlord's consent, the tenant shall be liable for and shall pay to the landlord a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day he remains in possession for any period up to one month. If the tenant remains in possession for a period longer than one month, he shall be liable for and shall pay to the landlord a sum equal to the monthly rent under the previous rental agreement for each additional month or fraction thereof. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover, except that the landlord's acceptance of rent in advance after the first month of hold-over shall create a month-to-month tenancy in the absence of an agreement between the parties to the contrary at the time of such acceptance.

Sec. -72 Landlord's remedies for improper use. (a) If the tenant breaches any rule authorized under section -52, the landlord may notify the tenant in writing of his breach. The notice shall specify the time, not less than thirty days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

“(Name and address of tenant) (date)

You are hereby notified that you have failed to perform according to the following rule:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this rule after (a date not less than thirty days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit.”

No allowance of time to remedy the breach of any rule authorized under section -52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section -51(1) or (6).

(b) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a summary proceeding for possession within thirty days after such continued or recurring breach.

Sec. -73 Landlord's and tenant's remedies for abuse of access. (a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section -53(a).

(b) Except for an entry under an emergency such as fire, the landlord shall be liable to the tenant for any theft, casualty, or other damage proximately caused by an entry into the dwelling unit by the landlord or by another person with the permission or license of the landlord:

(1) When the tenant is absent and has, after having been notified by the landlord of a proposed entry or entries, refused consent to any such specific entry;

- (2) Without the tenant's actual consent when he is present and able to consent; or
- (3) In any other case, when the damage suffered by the tenant is proximately caused by the landlord's negligence.

(c) Repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license which is unreasonable and not consented to by the tenant, may be treated by the tenant as grounds for termination of the rental agreement. Any circuit court judge on behalf of one or more tenants may issue an injunction against a landlord to enjoin violation of this subsection.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent by a tenant to a particular entry, shall be void.

Sec. -74 Retaliatory evictions and rent increases prohibited. (a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant; nor decrease the services to which the tenant has been entitled, after:

- (1) The tenant has complained in good faith to the department of health of conditions in or affecting his dwelling unit which constitute a violation of a health law or regulation; or
- (2) The department of health has filed a notice or complaint of a violation of a health law or regulation; or
- (3) The tenant has in good faith requested repairs under section -63 or -64.

(b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:

- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of his rental agreement;
- (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode;
- (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
- (4) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit;
- (5) The complaint or request of subsection (a) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in his household or on the premises with his consent;
- (6) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of

filing of the complaint or request in compliance with health laws and regulations;

(7) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to paragraph (2), (3), or (4); or

(8) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).

(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by him and the cost of suit, including reasonable attorney's fees.

(d) Notwithstanding subsection (a), the landlord may increase the rent if:

(1) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request of subsection (a) in compliance with health laws and regulations;

(2) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs;

(3) The landlord has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;

(4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of his household or on the premises with his consent; or

(5) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in his building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market rental value of the dwelling unit.

Sec. -75 Unconscionability. (a) In any court action or proceeding with respect to a rental agreement, if the court as a matter of law finds the agreement or any provision of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the rental agreement or

any provision thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(c) For the purposes of this section, an act or practice expressly permitted by this chapter is not in itself unconscionable.

Sec. -76 Office of consumer protection to provide counsel for certain tenants. In any proceeding brought by or for a landlord against a tenant under this chapter, other than actions brought in the small claims court, [the court]* shall inform the tenant of his right to counsel, and if the court determines that the tenant is unable to afford his own counsel and is unable to obtain counsel through a nonprofit organization authorized to provide administrative support to lawyers who provide legal services to indigents, the court may notify the office of consumer protection which shall provide counsel for the tenant in the proceedings."

SECTION 2. Chapter 666, Hawaii Revised Statutes, is amended by repealing part II.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. This Act, upon its approval, shall take effect on January 1, 1973.

(Approved May 30, 1972.)

ACT 133

S. B. NO. 1580-72

A Bill for an Act Relating to Limitations of Action for Damage Based on Professional Services or Licensed Construction to Improve Real Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 657-8, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 657-8 Limitation of action for damages based on professional services or licensed construction to improve real property. No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained on account of such injury, shall be brought against any registered or duly licensed person performing or furnishing professional or licensed services in the design, planning, supervision, or observation of construction or construction of the improvement to real property more than two years after the cause of action has accrued, but in any event not more than six years after the performance or furnishing of the services except that this provision shall not apply to surveyors for their own errors in boundary surveys."

*Added to correct apparent omission.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 134

S. B. NO. 1649-72

A Bill for an Act Relating to Pest Control, Regulating Pest Control Operators and the Use of Fumigation and Other Means of Pest Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A new chapter is added to the Hawaii Revised Statutes, to be appropriately numbered and to read as follows:

**“CHAPTER
PEST CONTROL OPERATORS**

Sec. -1 Definitions. As used in this chapter:

- (1) ‘Board’ means the pest control board.
- (2) ‘Director’ means the director of regulatory agencies.
- (3) ‘Fumigation’ means the use of any substance or substances that emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the board, may be lethal, poisonous, noxious, or dangerous to human life.
- (4) ‘Fumigator’ means any person licensed by the board as a pest control operator who shall have been qualified by the board in the branch of pest control which includes fumigation.
- (5) ‘Pest control operator’ means any person licensed by the board to practice pest control and who does so for compensation as a business, regardless of the cost of the job.
- (6) ‘Pest control’ means, with respect to household pests and woods destroying pests, or such other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or performing the following:
 - (A) Identifying infestations or infections;

*Edited accordingly.

- (B) Making an inspection for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests;
 - (C) Making inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to such infestations or infections; and
 - (D) Making contracts, or submitting bids for, or the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations or infections of such pests or organisms.
- (7) 'Household pests' means those pests other than wood destroying pests which invade households and other structures, including, but not limited to, rodents, vermin, and insects.

Sec. -2. Pest control board. (a) There shall be a pest control board of seven members. Four members of the board shall be appointed by the governor, pursuant to section 26-34, and shall have been for a period of not less than five years preceding the date of their appointment, operators actively engaged in the business of pest control with a pest control contractors license. Three members of the board shall serve on an ex-officio voting basis: the director of the department of agriculture or his representative, the director of the department of health or his representatives, and the chairman of the department of entomology of the college of tropical agriculture of the University of Hawaii or his representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control.

(b) Except for members of the board first appointed, no one, except the ex-officio members, shall be eligible for appointment who does not at the time of his appointment hold a valid and unexpired license to operate as a pest control operator.

(c) Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice-chairman. The board shall keep a complete record of all proceedings and shall present annually to the governor through the director of regulatory agencies a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as the board may deem proper. The board is placed within the department of regulatory agencies for administrative purposes.

(d) No member of the board shall receive any compensation for his services, but each shall be reimbursed for his necessary expenses, including travel expenses, incurred in the performance of his duties."

Sec. -3. Powers and duties of board. In addition to any other duties and powers granted by this chapter the board shall:

- (1) Grant licenses to operators pursuant to this chapter;
- (2) Make, amend, or repeal such rules and regulations as it may deem necessary to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules

and regulations shall be adopted pursuant to chapter 91. Such rules and regulations may:

- (A) Forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
- (B) Require operators to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules and regulations or more fully to effectuate the purposes of this chapter;
- (C) Require operators to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter;
- (3) Enforce this chapter and rules and regulations adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules and regulations, and refuse to grant any license for any cause which would be grounds for revocation or suspension of a license;
- (5) Direct the executive secretary to publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter.

Sec. -4 Executive secretary; other assistants.

(a) Subject to chapters 76 and 77 and section 78-1, the department of regulatory agencies may employ and remove such administrative and clerical assistants as the board may require and prescribe their powers and duties;

- (b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77 and section 78-1. The executive secretary shall be employed with due regard to his fitness and administrative ability. He shall devote his entire time to the duties of his office and shall not be actively engaged or employed in any other business, vocation, or employment, nor shall he have any pecuniary interest, direct or indirect, in any pest control enterprise or enterprises conducted or carried on within the State.
- (2) The executive secretary shall, under the supervision of the board:
 - (A) Administer this chapter and the rules and regulations and orders established thereunder and perform such other duties as the board may require;
 - (B) Be in charge of the offices of the board for the preparation of reports and the collection and dissemination of data and other public information relating to pest control.
- (3) The board may, by written order filed in its office, delegate to the executive secretary such of its powers or duties as it deems reasonable and proper for the effective administration of this chapter, except the power to make rules and regulations. The delegated powers and duties may be exercised by the executive secretary in the name of the board.

Sec. -5 Place of meeting. The director of regulatory agencies shall

provide suitable quarters for meetings of the board and for transaction of its other business.

Sec. -6 Licenses required. No person within the purview of this chapter shall act or assume to act, or advertise, as a pest control operator or fumigator without a license previously obtained under and in compliance with this chapter and the rules and regulations of the board. No person required to be licensed under this chapter shall be subject to chapter 444.

Sec. -7 Investigation permitted. The board may investigate, classify, and qualify applicants for operators' licenses.

Sec. -8 No license issued when. No license shall be issued to:

- (1) Any person unless he has filed an application therefor;
- (2) Any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any partnership or joint venture unless one member of the partnership or joint venture who actively participates in the pest control business thereof holds an appropriate license;
- (4) Any corporation unless the pest control business thereof is under the direct management of an officer who holds an appropriate license;
- (5) Any individual unless he is of the age of eighteen years or more;
- (6) Any person unless he submits satisfactory proof to the board that he has obtained workmen's compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.

Sec. -9 Application; fees. (a) Every applicant for a license under this chapter shall file an application with the board in such form and setting forth such information as may be prescribed or required by the board, and shall furnish such additional information bearing upon the issuance of the license as the board requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership, joint venture, or corporation, any licensed member or officer therefore may sign the application and verify the same on behalf of the applicant.

(b) Every application, in the case of an individual, shall be accompanied by sworn certificates of not less than two persons who have known the applicant for a period of not less than six months, certifying that the applicant bears a good reputation for honesty, truthfulness, and fair dealing.

(c) Every application for a license hereunder shall be accompanied by an application fee of \$25.

Sec. -10 Form for licenses. The form of every license shall be prescribed by the board and shall be issued in the name of the board.

Sec. -11 Place of business and posting of license. A licensed operator shall have and maintain a definite place of business in the State and shall display therein his operator's license.

Sec. -12 Group license; classification of branches of pest control; designation of groups; examinations; rules and regulations; licenses in other groups; subjects of examination; passing grade. (a) Licenses issued to opera-

tors or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches:

- (1) Branch 1. Fumigation. The practice relating to the control of household and wood destroying pests by fumigation with poisonous or lethal gases.
- (2) Branch 2. General Pest. The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.
- (3) Branch 3. Termite. The practice relating to the control of wood destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section -14.

(b) Any person who, on or after January 1, 1951, was operating as a fumigator or a pest control operator under a permit issued by the department of health or operating under a license issued by the contractors license board, shall, without requirement or examination, receive a license commensurate to the class of active permit or license presently held by him.

(c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except the examining personnel and the applicants for license.

(d) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(e) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branches shall have any effect on existing licenses.

(f) The examinations shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to such applications shall be granted to any applicant who scores a general average on the examination of not less than seventy per cent on each of the subjects of such branch or branches.

Sec. -13 Examination; operator's license. The board shall ascertain by written examination that an applicant for a license as operator is qualified in the use and understanding of all of the following:

- (1) The English language, including reading, writing, and spelling.
- (2) The building and safety laws of the State and any of its political sub-

divisions, if the branch or branches of pest control for which he is applying require such knowledge.

- (3) The labor laws of the State.
- (4) The provisions of this chapter.
- (5) Poisonous and other dangerous chemicals used in pest control, if the branch license or licenses for which he is applying, require such knowledge.
- (6) The theory and practice of pest control in the branch or branches for which the applicant desires to be licensed.
- (7) Such other state laws, safety or health measures, or practices as are reasonably within the scope of pest control in the various branches.

Sec. -14 Fees; annual renewal. The fee for each original license and renewal prescribed by this chapter shall be \$25.

The annual renewal fee shall be paid to the board on or before June 30 of each year. Failure, neglect, or refusal of any duly licensed operator to pay the annual renewal fee shall constitute a forfeiture of his license. Any such license may be restored upon written application therefor within one year from such date and the payment of the required fee plus an amount equal to ten per cent thereof.

All fees and other money collected or received under this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

Sec. -15 Revocation, suspension, and refusal of renewal of licenses; prohibition against certain offenses, etc.

(a) The board may revoke, suspend, or refuse to renew any license issued hereunder, for any of the following causes:

- (1) Conviction of any felony or misdemeanor involving moral turpitude;
- (2) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or his authorized representative;
- (3) Disregard and violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (4) Misrepresentation of a material fact by the applicant in obtaining a license;
- (5) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract;
- (6) Failure to comply with this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests;
- (7) The commission of any grossly negligent or fraudulent act by the licensee as an operator;

- (8) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (9) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work or any infestation or infection of wood-destroying pests found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests whether or not a report was made pursuant to sections -19 and -20;
- (10) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of wood-destroying pests;
- (11) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with his operations as an operator when he has the ability to pay or when he has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (12) The false denial of any debt due or the validity of the claim therefore with intent to secure for the licensee, his employer, or other person, any discount of such debt or with intent to hinder, delay or defraud the person to whom such debt is due;
- (13) Failure to secure or maintain workmen's compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (14) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.

(b) Any person who has been denied a license for any of the reasons specified in section -8, or who has had his license revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension, or who has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose application for a license has been denied for any of the reasons specified in section -8, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director, associate, partner, or responsible managing employee of a licensee.

Sec. -16 Hearings. In every case where it is proposed to refuse to grant a license or to revoke or suspend a license or to refuse to renew a license, the board shall give the person concerned notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

The hearing whenever possible shall be held on the island on which the aggrieved party resides.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or such member, or the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

Sec. -17 Death or dissociation. No partnership, joint venture, or corporation shall be deemed to have violated this chapter by acting or assuming to act as a contractor after the death or dissociation of a licensee who had the direct management of the pest control business thereof prior to final disposition by the board of an application for a license made within thirty days from the date of the death or dissociation.

Sec. -18 Accusations against licensees, when to be filed. All accusations against licensees shall be filed within two years after the act or omission alleged as the ground for revocation or suspension of a license, except that with respect to accusations alleging a violation of section -15(4), the accusation may be filed within two years after the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by section -15(4).

The lapsing or suspension of a license by operation of law or by order of the board or a court of law or the voluntary suspension of a license by a licensee shall not deprive the board of jurisdiction to proceed with an investigation of or action or proceeding against the licensee, or to render a decision suspending or revoking the license.

Sec. -19 Wood-destroying pests or inspection required; field reports; inspection reports; form and contents; filing and delivery; statement of guarantee; control service; control service contract. (a) This section shall apply only to wood-destroying pests.

(b) No licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood-destroying pests until an inspection has been made. A written inspection report conforming to this section and on a form prescribed by the board shall be prepared and delivered to the person requesting the inspection or his designated agent, before work is commenced. The following shall be set forth in the report:

- (1) The date of the inspection and the name of the person making the inspection;
- (2) The name and address of the person or firm ordering the report;
- (3) The name and address of any person who is a party in interest to

whom the licensee is to send certified copies of inspection reports and completion notices;

(4) The address or location of the property;

(5) A general description of the building or premises inspected.

Any contract entered into, shall state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

(c) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and such corrections as have been agreed upon have been completed. Under a control service agreement, a licensee shall refer to the original report and contract in such manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A licensee is not required to issue a report as outlined in paragraph (1) to (5) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are originally reported. A control service contract shall state specifically the particular wood-destroying pests and the portions of the buildings or structures covered by the contract.

Sec. -20 Document expressing an opinion or making statement regarding the presence or absence of wood-destroying pests; contents. Any work contract, billing, agreement, letter of work completed, or other correspondence or document, expressing an opinion or making a statement relating to the presence or absence of wood-destroying pests shall refer to the report defined in section -19(b). Such documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, it shall indicate specifically which recommendations were not completed.

Sec. -21 Fumigation under supervision. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator in the branch of pest control which includes fumigation.

Sec. -22 Fumigation job log; preservation and inspection. A licensee shall maintain a log of each fumigation job performed by him in this State. The log shall be in the form required by the regulations of the board and shall be preserved for a period of at least two years, during which time it shall be available at all times during business hours for inspection by the board and its authorized representatives.

Sec. -23 Pest control. A pest control operator may secure pest control work, identify infestations or infections, make inspections, and submit bids or otherwise contract for pest control work. A pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts.

Sec. -24 Application of soil treatment pest control work. A licensed contractor may contract for the performance of any soil treatment pest control

work to eliminate, exterminate, control, or prevent infestations or infections of pests in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a pest control operator.

Sec. -25 Insurance. No person shall engage in the business of pest control unless he has filed with the director of finance, a general liability insurance policy approved by the director in the minimum amount of \$20,000 for any one claim and a minimum aggregate of not less than \$50,000 for all claims arising during a policy term of one year. In the event such policy cannot be obtained, the licensee may file with the director in lieu thereof a verified statement providing proof satisfactory to the director of financial responsibility equivalent to that provided for by any such insurance policy; provided, that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which he is employed. This section shall not apply to vault fumigation.

Sec. -26 Exemptions. This chapter shall not apply to officials of the federal government on military reservations; or to personnel of the United States department of agriculture, the state department of agriculture, or state department of land and natural resources, or the United States public health service in the performance of their official duties; or to qualified scientific personnel specially exempted by the board; or to persons engaged in pest control for agricultural purposes.

Sec. -28 Violation of chapter; penalty. Any person who violates this chapter, or who conspires with another person to violate this chapter shall be fined not less than \$500 or imprisoned for not more than six months, or both."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 135

H. B. NO. 348

A Bill for an Act Relating to State Rent Supplements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 359-123, Hawaii Revised Statutes, is amended to read:

"Sec. 359-123. Qualified tenant defined. As used in this part, the term 'qualified tenant' means (1) any single person who has attained the age of 62 or who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, and (2) any family; provided such single person or family has, pursuant to criteria and procedures established by the Hawaii housing authority, been determined to have an income which would qualify the tenant for occupancy in housing provided by section 221(d)(3) of the National Housing Act or to have a lesser income. The terms 'qualified tenant' and 'tenant' include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership

to the cooperative, will not be reimbursed for more than fifty per cent of any equity increment accumulated through payments under this part. With respect to members of a cooperative, the terms 'rental' and 'rental charges' mean the charges under the occupancy agreements between such members and the cooperative.

SECTION 2. Subsection 359-125(a) Hawaii Revised Statutes, is amended to read:

"(a) For purposes of carrying out this part, the Hawaii Housing authority shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The authority shall issue, upon the request of a housing owner, certificates as to the following facts concerning the single persons and families applying for admission to, or residing in, dwellings of such owner:

- (1) The income of the single person or family; and
- (2) Whether the single person or family was displaced from public housing administered under chapter 356 for exceeding the maximum allowable income for continued occupancy."

SECTION 3. Chapter 359, Hawaii Revised Statutes, is amended by adding thereto a new section to be designated and to read:

"Sec. 359-127. Rules and regulations. The Hawaii housing authority may adopt and promulgate all rules and regulations necessary to carry out the purpose of this part, including rules and regulations relating to determining preference among applicants for State rent supplements.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 136

H. B. NO. 620

A Bill for an Act Relating to Rates and Fees Applicable to Harbor and Boating Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 266-17, Hawaii Revised Statutes, is amended to read:

"Sec. 266-17 Rates, how fixed. The department of transportation shall adjust and fix and enforce the rates assessable and chargeable by it in respect to dockage, wharfage, demurrage, and other rates and fees pertaining to har-

*Edited accordingly.

bors, wharves, and properties managed and operated by it so as to produce from the rates and fees:

(1) In respect to all such harbors, wharves, and other properties, except such as are principally used for recreation or the landing of fish, revenues sufficient to: (A) pay when due the principal of and interest of all bonds and other obligations for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, or which are otherwise payable from the revenue or from a special fund maintained or to be maintained from the revenue, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds or other revenue obligations and interest thereon, which are payable from the special fund, including reserves therefor; (B) provide for all expenses of operation and maintenance of the properties, including reserves therefor, and the expenses of the department in connection with operation and maintenance; and (C) reimburse the general funds of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements, or to refund any of the improvement bonds, excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties.

(2) In respect to properties under its control and management which are principally used for recreation or the landing of fish, revenues may be collected in an amount at least sufficient to pay the expenses of operating and maintaining the facilities and services and the cost including interest, of amortizing capital improvements; provided that the costs of constructing, operating and maintaining general navigation channels, protective structures and aids to navigation shall be excluded; provided, further, that rates established under this paragraph shall be fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. All revenues shall be deposited with the director of finance to the credit of the general fund."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 137

H. B. NO. 1645-72

A Bill for an Act Relating to Mass Merchandising of Motor Vehicle Insurance.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this act is to authorize the sale of private passenger motor vehicle insurance in the State by mass merchandising.

*Edited accordingly.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part, reading as follows:

“MASS MERCHANDISING OF MOTOR VEHICLE INSURANCE

Sec. 431- . Definitions. As used in this part:

- (1) ‘Employees’ includes compensated officers, managers, and employees of a firm, corporation, partnership, sole proprietor, trust, estate, or members of unincorporated association or organization. A mass merchandising agreement may provide that the term ‘employees’ shall include retired employees and the individual proprietor, partners, or trustees, if the employer is an individual proprietor, partnership, trust, or estate.
- (2) ‘Employer’ includes any firm, corporation, partnership, sole proprietor, trust, estate, and unincorporated association or organization; it also includes the State, any county, and any municipal corporation, and any governmental unit, agency, or department thereof.
- (3) ‘Insurer’ means an insurer authorized to transact the business of motor vehicle insurance in the State.
- (4) ‘Mass merchandise’ means to sell and ‘mass merchandising’ means a sale of insurance wherein (A) the insurance is offered to employees of particular employers or to members of particular established associations or organizations and (B) the employer, association, or organization has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or members.
- (5) ‘Mass merchandising plan’ or ‘plan’ means a program, design, or scheme of the insurance to be mass merchandised, including terms, coverages, and premiums.
- (6) ‘Mass merchandising agreement’ means an agreement between an insurer and an employer, association, or organization for the sale of insurance to the employees of the employer or to the members of the association or organization on a mass merchandising basis.
- (7) (a) ‘Private passenger motor vehicle’ (or motor vehicle) means a motor vehicle of the private passenger, station wagon or jeep type, motorcycle, motorized bicycle, power cycle, motor scooter and any other similar vehicles of the private passenger type including trailers and semi-trailers used in connection therewith, but shall not include any of the foregoing which are used as a public or livery conveyance for passengers or rented to others without a driver or used primarily in the business of the insured.
 (b) ‘Private Passenger motor vehicle’ shall also include a motor vehicle with a pick-up or similar body, a delivery sedan or a panel truck which is not customarily used in the occupation, profession or business of the insured other than in the course of driving to and from work if such vehicle shall have a load capacity of 1500 pounds or less.
- (8) ‘Private Passenger motor vehicle insurance’, ‘insurance’ or ‘motor

vehicle insurance' means insurance against loss or expense, or liability for loss or expense resulting from injury to persons or loss of or damage to property arising from the ownership, operation, maintenance, or use of a private passenger motor vehicle.

Sec. 431- . Applicability. This part shall apply only to private passenger motor vehicle insurance and to policies which become effective on or after October 1, 1972. The provisions of this part are in addition to, and not in substitution for, other applicable requirements of law relating to motor vehicle insurance and the rules and regulations of the insurance commissioner adopted pursuant thereto. The requirements of this part do not apply to methods of merchandising other than mass merchandising as defined in Section 431- .

Sec. 431- . Mass merchandising authorized. An insurer may mass merchandise private passenger vehicle insurance to the employees of any employer or to the members of any association or organization under a mass merchandising plan audited by the insurance commissioner; provided that such mass merchandising is agreed to by the employer, association, or organization. An employer, association, or organization may contract with one or more insurers for mass merchandising of private passenger motor vehicle insurance to its employees or members.

Sec. 431- . Mass merchandising prohibited when. (a) No insurer shall mass merchandise motor vehicle insurance to members of any association or organization formed principally for the purpose of obtaining the benefits of mass merchandising.

(b) No insurer shall mass merchandise motor vehicle insurance to employees of any employer or to members of any association or organization which requires the purchase of or participation in insurance sold on a mass merchandising basis as a condition of employment or membership, or which subjects any employee or member to any penalty for failure to purchase or participate in insurance sold on a mass merchandising basis.

Sec. 431- . Mass merchandising requirements. Mass merchandising of motor vehicle insurance and every mass merchandising plan shall be subject to the following conditions:

- (1) The insurance offered shall be open to participation by or be available to every employee of the employer or to every member of the association or organization who meets the underwriting requirements of the insurer.
- (2) The insurance shall be offered without discrimination against any employee or member as to rates, forms, or coverages. Nothing herein shall preclude the establishment of different classes of risks.
- (3) Upon the termination of employment or membership or upon the termination of the mass merchandising agreement, an insured employee or member shall have the option of continuing his participation in a group policy or his individual policy then in force for a period of one year upon payment of the applicable premium; provided that the employee or member shall exercise his option within thirty days following the date of such termination.

- (4) The insurer shall issue a certificate or other evidence of participation to every member covered under a group policy and a policy of insurance to every member insured under an individual policy.
- (5) The insurance offered shall not be contingent upon the purchase of any other insurance, product, or service; nor shall the purchase of any other insurance, product, or service be contingent upon the purchase of the motor vehicle insurance offered.

Sec. 431- . Disclosure. Every insurer selling motor vehicle insurance on a mass merchandising basis shall, prior to sale, make full and fair disclosures to prospective insureds of all features of the plan, including but not limited to premium rates, claims procedure, benefits, duration of coverage, and policyholder services.

Sec. 431- . Payroll deductions and premium collections. A mass merchandising agreement may provide for the collection of premiums from employees or members by payroll deductions, assessments, or otherwise, and the remittance of the same to the insurer by the employer, association, or organization. No such collection and remittance of premiums by the employer, association, or organization shall constitute collection of premium within the meaning of this chapter; no act of furnishing information about such collection method by the employer, association, or organization to its employees or members shall constitute solicitation of applications for insurance; and neither the collection and remittance of premiums nor the furnishing of information about such collection method shall constitute the employer, association, or organization an agent, subagent, or solicitor of insurance.

Sec. 431- . Employer's failure to remit premiums. If any employer, association, or organization is required under a mass merchandising agreement to collect the premiums from its employees or members and remit the same to the insurer, its failure to so collect and remit as to any employee or member for any reason, including termination of the employee's employment or the member's membership in the association, or organization, shall not be regarded by the insurer as nonpayment of premium by such employee or member, unless the insurer gives written notice of such failure to remit to the employee or member and the employee or member fails to pay the required premium by the later of (1) thirty days after the mailing or delivery of the notice to the address of the employee or member last known to the insurer, or (2) the due date of the premium.

Sec. 431- . Cancellation and nonrenewal. Except as provided in the previous section, no policy of an individual employee or member of participation of an employee or member in a group policy shall be cancelled or its renewal denied unless a thirty-day written notice of cancellation or renewal is given the employee or member. All such notices shall set forth the reasons for the cancellation or nonrenewal. The insurer will, prior to the expiration of said thirty-day period, afford the employer, association, or organization a reasonable opportunity to consult with the insured and to present facts in opposition to cancellation or non-renewal.

Sec. 431- . Premium rates. Premium rates for private passenger motor

vehicles insurance sold on a mass merchandising basis shall comply with the standards in Section 431-693 and 431-713 including the standards that rates not be excessive, inadequate or unfairly discriminatory.

Rates shall not be deemed to be unfairly discriminatory because different premiums result for policyholders with like loss exposure but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates shall not be deemed to be unfairly discriminatory if they are averaged broadly among persons insured under a mass merchandising plan.

Sec. 431- . Underwriting standards. Every plan of mass merchandising and all rules and standards applicable to mass merchandising of motor vehicle insurance shall be subject to audit by the insurance commissioner by written request to the insurer. No underwriting standard for risk selection or otherwise under a mass merchandising plan shall be more restrictive than the standards used for insurance sold by methods other than mass merchandising.

Sec. 431- . Statistics. Every insurer mass merchandising motor vehicle insurance shall keep and maintain data on its experience under each plan, including data on premium income, losses, and expenses. The data shall be kept and maintained separately from any experience data on motor vehicle insurance sold by means other than mass merchandising.

Sec. 431- . Licenses. No person shall act as an insurance agent, sub-agent, or solicitor, in connection with mass merchandising of motor vehicle insurance, unless he is licensed as such under Sections 431-361, 431-362, or 431-363.

Sec. 431- . Establishment and maintenance of office. Every insurer selling motor vehicle insurance on a mass merchandising basis shall establish and maintain at all times an office in the State to conduct the administration of its business and handle claims.

Sec. 431- . Rules and regulations. The insurance commissioner shall promulgate rules and regulations necessary to effectuate the purposes of this part.

Sec. 431- . Scope of mass merchandising. Nothing in this part shall authorize the mass merchandising of motor vehicle insurance other than private passenger motor vehicle insurance as defined herein."

SECTION 3. Effective date. This act shall take effect upon its approval.
(Approved May 30, 1972.)

ACT 138

H. B. NO. 1656-72

A Bill for an Act Relating to the Revised Uniform Estate Tax Apportionment Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new

chapter to be appropriately designated and to read as follows:

**“CHAPTER
REVISED UNIFORM ESTATE TAX APPORTIONMENT ACT**

Sec. -1 Definitions. In this chapter:

- (1) “Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State;
- (2) “Fiduciary” means executor, administrator of any description, and trustee;
- (3) “Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- (4) “Person interested in the estate” means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent’s taxable estate;
- (5) “State” means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and
- (6) “Tax” means the federal estate tax and the estate tax payable to this State and interest and penalties imposed in addition to the tax.

Sec. -2 Apportionment. Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

Sec. -3 Procedure for determining apportionment. (a) The circuit court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the circuit court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(b) If the circuit court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(c) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in section -2 and charged and collected as a part of the tax apportioned. If the circuit court finds it is inequitable to apportion the expenses as provided in section -2, it may direct apportionment thereof equitably.

(d) If the circuit court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(e) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the circuit court in respect thereto is *prima facie* correct.

Sec. -4 Method of Proration. (a) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession, distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax the fiduciary or other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the circuit court having jurisdiction of the administration of the estate.

Sec. -5 Allowance for exemptions, deductions, and credits. (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chap-

ter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

Sec. -6 No apportionment between temporary and remainder interests. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

Sec. -7 Exoneration of fiduciary. Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. -8 Action by non-resident, reciprocity. Subject to this section a fiduciary acting in another state or a person required to pay the tax who is resident in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either resident in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

Sec. -9 Short title. This chapter may be cited as the revised uniform estate tax apportionment Act."

SECTION 2. This Act shall take effect on January 1, 1973 and shall not apply to taxes due on account of the death of persons dying prior to January 1, 1973.

(Approved May 30, 1972.)

A Bill for an Act Relating to Free Copies of Certain Decrees for Veterans.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 606-5, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 606-5 Free copies of certain decrees to veterans. The clerk of any state court shall provide to any veteran of the armed forces of the United States, the veteran's spouse, any member of the immediate family of a veteran, or the next of kin of a deceased veteran, free copies of decrees of divorce or adoption, when such copies are required for use in connection with a claim based on service in the armed forces of the United States."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

A Bill for an Act Relating to Unfair Claim Settlement Practices by Insurers.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read:

"Sec. 431- Unfair claim settlement practices. (a) No insurer doing business in this State shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices:

- (1) Misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- (2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
- (4) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear; or
- (5) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

*Edited accordingly.

“(b) Evidence as to numbers and types of complaints to the insurance commissioner against an insurer, and said insurance commissioner’s complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under the chapter; provided no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints.

“(c) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for the purposes of section 431-17.”

SECTION 2. This Act shall take effect September 1, 1972 and shall be applicable to all acts by insurers occurring thereafter.

(Approved May 30, 1972.)

ACT 141

H. B. NO. 1759-72

A Bill for an Act Relating to Authorized Absence from Psychiatric Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-75, Hawaii Revised Statutes, is amended to read:

“**Sec. 334-75 Authorized absence.** The administrator of a psychiatric facility or his deputy may grant authorized absence from the facility to any patient upon such terms and conditions as the administrator or his deputy may deem advisable, and, as to a patient admitted or committed on court order, with the prior approval of the court for periods in excess of 30 days, and without the approval of the court for periods up to 30 days, or, as to a patient transferred under section 334-74, with the prior approval of the official effecting the transfer.”

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 142

H. B. NO. 1838-72

A Bill for an Act Relating to the Small Claims Division of the District Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 633-27, Hawaii Revised Statutes, is amended to read as follows:

*Edited accordingly.

"Sec. 633-27 District courts; powers. All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed does not exceed \$300 exclusive of interest and costs, except as provided by Section 633-30; and
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraph (1) to determine cases under the ordinary procedures of the court, it being optional with the parties to such cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive.

Actions shall be commenced in small claims division of the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose, unless service cannot be made on all of the defendants in that circuit, in which case action may be commenced in any circuit in which all of the defendants can be served."

SECTION 2. Section 633-28, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 633-28 Small claims, no appeal; appearance by whom. (a) Actions shall be commenced and conducted in the small claims division of the district court as provided by the rules of court. The clerk of the court shall, at the request of an individual, prepare the papers required to be filed in an action in the court, but his services in the preparation of these papers shall not be available to a corporation, partnership, or association, or to any individual proprietorship. The mode of service shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit. There shall be no appeal from a judgment of the small claims division, but the court, sitting as the small claims division, may alter or set aside any judgment as provided by the rules of court.

(b) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of himself or another in the small claims division of the district court; provided, in cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship, licensed practitioners are prohibited to appear on behalf of another person. The services of an unlicensed person appearing under this subsection shall be without compensation, either by way of direct fee, contingent fee, or otherwise. In the event the services are rendered for compensation this subsection is inapplicable and the rendering of the services constitutes the unlawful practice of law, except as otherwise provided.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 143

H. B. NO. 2044-72

A Bill for an Act Relating to Deposition and Discovery Proceedings, Amending Chapter 624, and Repealing Chapter 625 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 624 of the Hawaii Revised Statutes is amended as follows:

(a) A new section 624-24 is added, to read as follows:

"Sec. 624-24. Arbitrators, etc. An arbitrator or other person, other than a court, having authority to hear, receive and examine evidence, may order that the deposition of a witness be taken within the state, or by leave of a circuit court outside the state, for use as evidence in a pending civil matter, when the circumstances are such that it is probable that the witness will not be able to, or will not be compellable to, attend and give evidence before such person at the hearing. Except as otherwise provided, the deposition shall be taken and may be used in the same manner as is provided by the rules of court relating to depositions in civil actions in circuit courts.

Nothing herein contained limits or affects any other power heretofore or hereafter conferred with respect to the taking of depositions."

(b) A new section 624-24.5 is added, to read as follows:

"Sec. 624-24.5. Compelling attendance of witness; commission for taking testimony.

(a) When the taking of a deposition is authorized by statute or rule of court, the attendance of the witness and the answering of questions may, except as otherwise provided, be compelled:

- (1) By any court when the action or proceeding is pending before it or the taking of the deposition has been ordered by it;
- (2) By the circuit court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another circuit court or an arbitrator or other person, other than a court;
- (3) By the district court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another district court.

*Edited accordingly.

(b) When the taking of a deposition outside the state is authorized by statute or rule of court and the issuance of a commission or letters rogatory is appropriate, the same may be issued by any court before which the action or proceeding is pending, or which has ordered or given leave for the taking of the deposition."

(c) A new section 624-25 is added, to read as follows:

"Sec. 624-25. Discovery. A civil action in the nature of a bill for discovery may be brought according to the usages and principles of courts of equity, unless the matter is governed by the rules of court."

(d) The new section enacted by Act 207, S. L. 1971, is renumbered 624-25.5, and inserted in chapter 624, to follow section 624-25.

(e) Section 624-27 is amended to read as follows:

"Sec. 624-27. Subpoena to witness. Where a commission to take testimony within the State has been issued from a court without the State, or where a notice has been given or any other proceeding has been taken for the purpose of taking testimony within the State, pursuant to the laws or practice of the state or jurisdiction wherein the deposition is to be used for purposes of discovery or as evidence, including the United States if it is a federal proceeding, the circuit court, in a proper case, on the presentation of a verified petition shall order the issuance of a subpoena to any witness, commanding him to appear before the commissioner, officer or person named or designated in the commission, notice or other paper, at a time and place specified in the subpoena, to testify in the same manner as is provided by the rules of court relating to depositions for use in State. If any witness fails to obey the subpoena, or refuses to testify, or to produce a book or paper pursuant to a subpoena or to subscribe his deposition, the court issuing the subpoena, if it is determined that a contempt has been committed, may prescribe the punishment as in the case of a recalcitrant witness in a circuit court in the State, and may make such additional or other orders as would be proper if the deposition were for use in the State."

(f) Section 624-28 is amended to read as follows:

"Sec. 624-28. Taking and return of deposition. The officer, commissioner, or person before whom a witness appears, in a case specified in section 624-27, shall take down his testimony, in writing, and shall annex thereto copies of all books and papers produced or such parts thereof as shall be required, and shall certify and transmit it in accordance with the laws and practice of the state or other jurisdiction from which the commission, notice, or other paper emanated."

(g) Section 624-35 is amended to read as follows:

"Sec. 624-35. Costs. The costs of depositions may be taxed in the bill of costs as provided by Section 607-9."

(h) Section 624-41 is amended to read as follows:

"Sec. 624-41. Action for. A person who, before action, is desirous of perpetuating his own testimony or the testimony of any other person, may proceed in accordance with the rules of court or may bring a civil action in the circuit court of any circuit in which it is fair and equitable to the parties that

the matter be heard, setting forth (1) that the plaintiff expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (4) the names of the persons he expects will be adverse parties and their addresses, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and praying for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the action, for the purpose of perpetuating their testimony.

Personal service shall be made on the expected adverse parties as in other civil actions. In case service cannot be made in the State service may be made as provided by sections 634-60 and 634-60.5, but if an action is brought under this section service shall not be made by publication."

(i) Section 624-45 is amended to read as follows:

"**Sec. 624-45. Costs.** The applicant or plaintiff shall pay all costs of all proceedings under section 624-41, but such disbursements ultimately may be allowed in taxation of costs as in the case of disbursements for depositions."

(j) Sections 624-1, 624-2, 624-11, 624-12, 624-13, 624-14, 624-15, 624-16, 624-17, 624-18, 624-19, 624-21, 624-22, 624-23, 624-26, 624-31, 624-32, 624-33, 624-34, 624-42, 624-43, and 624-44 are deleted.

(k) The heading of chapter 624 is changed to read "DEPOSITIONS AND DISCOVERY".

(l) The part heading preceding section 624-21 is renumbered and changed to read: "Part I. General Provisions".

(m) The part heading preceding section 624-26 is renumbered "Part II".

(n) A part heading is inserted preceding section 624-35 to read: "Part III. Costs".

(o) The part heading preceding section 624-41 is renumbered "Part IV".

(p) The part headings preceding sections 624-1, 624-11, and 624-31 are deleted.

SECTION 2. Chapter 625 of the Hawaii Revised Statutes is repealed, except the new section 625-15, enacted by Act 207 of the Session Laws of 1971, which is renumbered and transferred to chapter 624 as elsewhere provided.

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 30, 1972.)

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 577-3 of the Hawaii Revised Statutes is amended by deleting from the next to the last line thereof the words "in law or in equity".

SECTION 2. Chapter 663 of the Hawaii Revised Statutes is amended as follows:

(a) Section 663-1 is amended by deleting from the sixth and seventh lines the words "domitae or ferae naturae" and inserting in lieu thereof "domestic or wild".

(b) Section 663-2 is amended by changing the word "action" in the next to the last line to read "actions".

(c) Section 663-3 is amended to read as follows:

"Sec. 663-3. Death by wrongful act. When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased's legal representative, or any of the persons hereinafter enumerated, may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons hereinafter enumerated, except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.

In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including (1) loss of society, companionship, comfort, consortium, or protection, (2) loss of marital care, attention, advice, or counsel, (3) loss of filial care or attention, or (4) loss of parental care, training, guidance, or education, suffered as a result of the death of the person by the surviving spouse, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided."

(d) Section 663-5 is amended by changing the caption to read "Death of defendant, continuance of action"; and by deleting from the fourth and fifth lines the words "shall not abate, but".

(e) Section 663-6 is amended by deleting from the sixth and seventh lines the word "instituted" and inserting in lieu thereof "commenced"; and by deleting from the last line the words "whichever is earlier" and inserting in lieu thereof "except as otherwise provided".

(f) Section 663-7 is amended to read as follows:

"Sec. 663-7. Survival of cause of action. A cause of action arising out of a wrongful act, neglect, or default, except a cause of action for defamation or malicious prosecution, shall not be extinguished by reason of the death of

the injured person. The cause of action shall survive in favor of the legal representative of the person and any damages recovered shall form part of the estate of the deceased."

(g) Section 663-12 is amended by changing the period at the end of the last paragraph to a comma and adding the following: "subject to section 663-17."

(h) Section 663-17 is amended as follows:

"Sec. 663-17 Third-party practice; enforcement of right to contribution.

(a) A pleader may, as provided by the rules of court, bring in as a third-party defendant a person not a party to the action who is or may be liable to him or to the person claiming against him, for all or part of the claim asserted against him in the action, whether or not liability for the claim is admitted by the pleader. A third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff as well as of his own liability to the plaintiff or to the third-party plaintiff.

(b) A pleader may either (1) state as a cross-claim against a co-party any claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (2) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tort-feasors one of whom has discharged the judgment by payment or has paid more than his prorata share thereof. If relief can be obtained as provided in this paragraph no independent action shall be maintained to enforce the claim for contribution.

(c) As among joint tortfeasors who in a single action are adjudged to be such, the last paragraph of Section 663-12 applies only if the issue of proportionate fault is litigated between them by pleading in that action."

(i) Section 663-31 is amended by changing the word "finding" in the first line of subsection (c) to read "findings", and by deleting from the third line of subsection 'c' the word "verdict" and inserting in lieu thereof "award".

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 30, 1972.)

ACT 145

H. B. NO. 2054-72

A Bill for an Act Relating to Guardianship and Trust Proceedings, Amending Chapters 551, 552, and 554 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 551 of the Hawaii Revised Statutes is amended as follows:

(a) The words "judge", or "judge at chambers" or "judge sitting at chambers" are changed to "court", the word "judges" is changed to "courts",

and the words “he” or “him” or “his” when used in relation to a judge are changed to “it” or “its”, wherever the same appears in sections 551-11, 551-13, 551-17, 551-29, 551-34, 551-41, 551-43, 551-46, 551-47, 551-48, 551-53, 551-55, 551-56, 551-57, 551-58, 551-59, 551-60, 551-61, 551-62, 551-63, 551-74, 551-76, 551-77, 551-78, 551-79, 551-81, 551-82, 551-83, 551-84, 551-87, 551-89, and 551-91.

(b) The words “any of the judges hereinbefore mentioned”, or “any of the judges hereinbefore specified”, are changed to “any court having jurisdiction” in sections 551-30, and 551-51.

(c) The words “legal suits” are changed to “actions” in section 551-51, and the words “a suit” are changed to “an action” in section 551-90.

(d) The word “any” is changed to “the” in the sixth line of section 551-55, and in the second line of section 551-76.

(e) Section 551-1 is amended to read as follows:

“Sec. 551-1. Jurisdiction. Family courts shall have jurisdiction to appoint guardians for the persons, and circuit courts shall have jurisdiction to appoint guardians for the estates, of minors and others according to law. Either a guardian of the person or the estate or both may be appointed.”

(f) Section 551-2 is amended by deleting from the second line the words “or judge”; by inserting in the third line after the word “minor” the words “or person not in being”; by deleting from the fourth line the words “or before such judge” and the words “suit or”; by deleting from the fifth line the word “their” and inserting in lieu thereof “its”; and by deleting from the sixth line the word “suit” and inserting in lieu thereof the words “action or proceeding”.

(g) Section 551-12 is amended by deleting from the end of the second line the word “and” and inserting in lieu thereof “or”, and by inserting in the third line after the word “estate” and the comma the words “as the case may be,”.

(h) Section 551-27 is amended by deleting from the third line the words “of the circuit court judges” and inserting in lieu thereof “court having jurisdiction”; by deleting from the fourth, sixth, tenth, eleventh, and fourteenth lines the word “judge”, wherever the same appears, and inserting in lieu thereof “court”; and by deleting from the fifteenth line the words “or both” and inserting in lieu thereof the words and punctuation “, as the case may be”.

(i) Section 551-28 is amended by deleting from the third line the word “and” and inserting in lieu thereof “or”; by inserting in the third line after the word “estate” and the comma the words and punctuation “as the case may be,”; and by deleting from the fourth and tenth lines the word “judge” and inserting in lieu thereof “court”.

(j) Section 551-31 is amended by deleting from the first and fourth lines the word “judge” and inserting in lieu thereof the word “court”, by deleting from the next to the last lines the word “he” and inserting in lieu thereof the word “it”, and by deleting from the next to the last line the words “person and”.

(k) Section 551-33 is amended by deleting from the second and third lines the words “the care and custody of the person of the ward, and”, and by deleting the comma at the end of the third line.

(I) Section 551-42 is amended by deleting from the third and fourth lines the words and punctuation "and also with respect to the person of the ward, if he comes to reside therein,".

SECTION 2. Chapter 552 of the Hawaii Revised Statutes is amended by deleting from the fourth line of section 552-2 the word "suit" and inserting in lieu thereof "action".

SECTION 3. Chapter 554 of the Hawaii Revised Statutes is amended as follows:

(a) Section 554-1 is amended by deleting from the fourth line the words "judge sitting in equity at chambers and" and inserting in lieu thereof the word "court".

(b) Section 554-2 is amended by deleting from the third line the words "judge of a"; by deleting from the seventh and eighth lines the word "judge" and inserting in lieu thereof "court"; by deleting from the first line of the second paragraph the words "Majority, etc., how determined."; and by inserting subsection designation (a) preceding the first sentence, and subsection designations (b) and (c) at the beginning of the second and third paragraphs, respectively.

(c) Section 554-3 is amended by deleting from the first and second lines the words "judge sitting at chambers in equity and" and inserting in lieu thereof the word "court"; by deleting from the second and third lines the word "petition" and inserting in lieu thereof the word "application"; by deleting from the fourth line the word "judge" and inserting in lieu thereof the words "court or provided by the rules of court"; and by deleting from the eleventh line the word "judge" and inserting in lieu thereof the word "court".

(d) Section 554-7 is amended by deleting from the third line the words "court of equity" and inserting in lieu thereof "circuit court", and by deleting from the next to the last line the words "usual procedure in" and inserting in lieu thereof "usages and principles of courts of".

SECTION 4. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 5. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 30, 1972.)

ACT 146

H. B. NO. 2200-72

A Bill for an Act Relating to the Issuance of General Obligation Bonds for Certain University Projects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The appropriations of the following sums, or so much thereof as shall be sufficient to finance the following undertakings, from University of Hawaii revenue bond funds made in the following undertakings is hereby continued:

- (1) Item E-38 of Section I of Act 187, Session Laws of Hawaii 1970, reading as follows:

E. UNIVERSITY OF HAWAII

Institutional Support

38. Student Housing, Manoa Campus, Oahu—Plans and construction of student dormitories with dining and kitchen facilities, including purchase of furniture and equipment and landscaping. 4,315,000(r)

- (2) Item E-39 of Section I of Act 187, Session Laws of Hawaii 1970, reading as follows:

E. UNIVERSITY OF HAWAII

Institutional Support

39. Parking Structures I, II, III and IV, Manoa Campus, Oahu—Construction of multi-story parking facility. 2,000,000(r)

- (3) Section 4 of Part III of Act 68, Session Laws of Hawaii 1971, reading as follows:

	FY 1971-1972	FY 1972-1973	Total Biennium FY 1971-1973
(A) C. EDUCATION AND CULTURE			
HIGHER EDUCATION			
Manoa Campus			
Student Services			
86. University of Hawaii, Student Housing Facilities, Manoa Campus, Oahu—Plans and construction of student housing facilities with dining and kitchen facilities, including purchase of furniture and equipment and landscaping.			
Design	—	355	355
Construction	5,670	5,670	11,430
Total funding	5,670(r)	6,025(r)	11,695(r)
(B) C. EDUCATION AND CULTURE			
HIGHER EDUCATION			
Manoa Campus			
Auxiliary Services			
108. University of Hawaii, Parking Structures, Phase I and II, Manoa Campus, Oahu—Construction			
Construction	—	4,500	4,500
Total funding	—	4,500(r)	4,500(r)
(C) C. EDUCATION AND CULTURE			
HIGHER EDUCATION			
Hilo College			
Student Services			
116. Hilo College, Student Housing Facilities, Phase III, Hilo, Hawaii—Construction and landscaping, including purchase of furniture and equipment			
Construction	1,958	288	2,246
Total Funding	1,958(r)	288(r)	2,246(r)
117. Hilo College, Student Housing Facilities, Phase IV, Hilo, Hawaii—Plans			
Design	—	344	344
Total Funding	—	344(r)	344(r)

(D) C. EDUCATION AND CULTURE

HIGHER EDUCATION

Maui Community College

Student Services

135. Maui Community College, Dormitories, Wailuku, Maui—Plans and construction and purchase of furniture and equipment

Design	6	—	6
Construction	370	—	370
Total Funding	376(r)	—	376(r)

The Governor, in his discretion, is authorized to use general obligation bond funds to finance all, or any one or more, or any part of, the foregoing undertakings, in lieu of the application thereto of University of Hawaii revenue bond funds, and the foregoing amounts, or so much thereof as shall be sufficient to finance said undertakings, are hereby appropriated from general obligation bond funds; provided, the sum total of University of Hawaii revenue bond funds and general obligation bond funds so used shall not exceed \$25,476,000. General obligation bonds may be issued as provided by law to yield the amount appropriated from general obligation bond funds which general obligation bonds shall be in addition to the general obligation bonds authorized to be issued by Act 187, SLH 1970 and Act 68, SLH 1971; provided that the sum total of general obligation bonds so issued to finance said undertakings shall not exceed \$25,476,000; and provided further, that the principal and interest of such bonds shall be reimbursed to the general fund from the net revenue derived from rates, rentals, fees and charges imposed for the use and services of or commodities and facilities furnished by the undertakings, or, if the respective undertaking shall be operated and maintained, or combined with, another or others of said undertakings, or with another or other University undertaking, as a system or systems, from the net revenue derived from the respective system or systems.

SECTION 2. Section 18 of Act 155, Session Laws of Hawaii 1969, is hereby amended to read as follows:

“SECTION 18. The University of Hawaii is authorized to issue revenue bonds for the incremental development of university dormitory facilities as contained in Section 1 hereof. The Governor, in his discretion, is authorized to use general obligation bond funds to finance the student dormitories authorized in Section 1, in lieu of the full application thereto of University of Hawaii revenue bond funds, and the foregoing amount, or so much thereof as shall be sufficient to finance such undertakings, are hereby appropriated from general obligation bond funds, provided, the sum total of University of Hawaii revenue bond funds and general obligation bond funds for student dormitories authorized in said section of this Act shall not exceed \$8,000,000. General obligation bonds may be issued as provided by law to yield the foregoing amount, which general obligation bonds shall be in addition to the general obligation bonds authorized in Section 1 hereof; provided the sum total of general obligation bonds so issued shall not exceed \$8,000,000. The principal and interest of general obligation bonds issued in lieu of University of Hawaii

revenue bonds for student dormitories authorized in Section 1 shall be reimbursed to the general fund from the net revenue derived from the rates, rentals, fees and charges imposed for the use and services of or commodities and facilities furnished by the undertaking or, if the respective undertaking shall be operated and maintained, or combined with, another or others of said undertakings, or with another or other university undertakings, as a system or systems, from the net revenue derived from the respective system or systems."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 147

H. B. NO. 2330-72

A Bill for an Act Relating to Eggs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to safeguard the public against the consumption of deleterious poultry products by application of uniform inspection standards for all eggs sold in Hawaii.

SECTION 2. Section 147-74, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 147-74. Grading standards and regulations. Subject to chapter 91, the department of agriculture may make rules and regulations with respect to:

- (1) Sale and transportation for sale of eggs for human consumption;
- (2) Specific grades or standards of quality, condition and size or weight classes which shall conform when practical to those established by the United States Department of Agriculture as local conditions will permit;
- (3) Inspection and classification;
- (4) Assessment and collection of fees for requested certification at a rate not to exceed \$3.50 per hour for each inspector for such service;
- (5) Labelling of containers of imported and locally produced eggs;
- (6) Seller's invoice for sale of eggs;
- (7) Records of imported shell eggs of foreign origin;
- (8) Methods of determining egg quality, which shall not include recandling or any other method applied to eggs in interstate commerce which is discriminatory or impairs that commerce in any way or requires a cost increase of eggs in interstate commerce;
- (9) Enforcement of this part and of the rules and regulations promulgated under this part."

*Edited accordingly.

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.
(Approved May 30, 1972.)

ACT 148

H. B. NO. 2377-72

A Bill for an Act Relating to Appeal by State in Criminal Cases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 641-12 of the Hawaii Revised Statutes is amended to read as follows:

"Sec. 641-12 By State in criminal cases. An appeal may be taken by and on behalf of the State from the district or circuit courts direct to the supreme court in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or information or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or dismissing the case where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal;
- (7) From a pre-trial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property in which case the supreme court shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal;

provided that no appeal shall be taken by or allowed the State in any case where there has been a verdict in favor of the defendant."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.
(Approved May 30, 1972.)

ACT 149

H. B. NO. 2382-72

A Bill for an Act Amending Section 281-52, Hawaii Revised Statutes, Relating to Public Hearing.

Be It Enacted by the Legislature of the State of Hawaii:

*Edited accordingly.

SECTION 1. Section 281-52, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-52. Public hearing. No license shall be granted except after a public hearing by the liquor commission upon notice as prescribed in this chapter; provided, that section 281-57 to 281-60 shall not apply to the holder of a wholesale general license, or a retail general license, or a dispenser's general license, who applies for a different kind of license within the class of his existing license, on the same premises, or to the holder of a cabaret license who applies for a dispenser license of any kind, on the same premises, or to the holder of a dispenser's beer and wine license who applies for dispenser's beer license, on the same premises, or to a licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of the same class of liquor license previously held by him on said premises."

SECTION 2. Statutory material to be repealed is bracketed, new material is underscored. In printing this act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 150

H. B. NO. 2449-72

A Bill for an Act To Amend Chapter 485, Hawaii Revised Statutes Uniform Securities Act (Modified).

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Item (14) of Section 485-6 of the Hawaii Revised Statutes is hereby amended to read as follows:

"(14) Any offer or sale by or through a real estate broker or real estate salesman licensed as such under the laws of the State of an apartment in a condominium project, and a rental management contract relating to such apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words 'apartment', 'condominium' and 'project' are defined as they are defined in Section 514-2."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act the revisor of statutes may exclude the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Hawaii Food, Drug, and Cosmetic Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328-1, Hawaii Revised Statutes, is amended to read:

“Sec. 328-1 Definitions. For the purposes of this part:

- (1) ‘Department’ means the department of health;
- (2) ‘Federal Act’ means the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 USC 3.01 et seq.);
- (3) ‘Food’ means (A) articles used for food or drink for man or animals, (B) chewing gum, and (C) articles used for components of any such article;
- (4) ‘Drug’ means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in man or animals; (C) articles (other than food) intended to affect the structure or any function of the body of man or animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C), but does not include devices or their components, parts or accessories;
- (5) ‘Device’, except when used (e.g. as an identification device in labeling) in sections 328-3(a), 328-6(10), 328-10(6), 328-15(3), and 328-19(3), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (A) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; or (B) to affect the structure or any function of the body of man or animals;
- (6) ‘Cosmetic’ means (A) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and (B) articles intended for use as a component of any such articles, except that the term shall not include soap intended for cleansing purposes only;
- (7) ‘Official compendium’ means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.
- (8) ‘Pesticide chemical’ means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an ‘economic poison’ within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., §§135-135k) as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities;

- (9) 'Raw agricultural commodity' means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.
- (10) 'Food additive' means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use, except that the term does not include:
- (A) A pesticide chemical in or on a raw agricultural commodity; or
 - (B) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - (C) A color additive; or
 - (D) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act, the Poultry Products Inspection Act (21 U.S.C. 451ff), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71ff);
- (11) (A) 'Color additive' means a material which:
- (i) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or
 - (ii) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that the term does not include any material which has been or hereafter is exempted under the Federal Act.
- (B) The term 'color' includes black, white, and intermediate grays.
 - (C) Nothing in clause (A) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

- (12) 'Consumer commodity' as herein defined means any food, drug, cosmetic or device as those terms are defined by, this part or, the Federal Act.

Such term shall not include:

- (1) Any meat or meat product or poultry or poultry product or tobacco or tobacco product;
- (2) Any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide and Rodenticide Act or the provisions of the eighth paragraph under the heading 'Bureau of Animal Industry' of the Act of March 4, 1913 (37 Stat 832-833; 21 USC 151-157), commonly known as the Virus-Serum-Toxin Act;
- (3) Any drug subject to the provisions of Section 503 (b) (1) or 506 of the Federal Food, Drug and Cosmetic Act (21 USC 353 (b) (1) and 356);
- (4) Any beverage subject to or complying with packaging and labeling requirements imposed under the Federal Alcohol Administration Act (27 USC 201 et seq.); or
- (5) Any commodity subject to the provisions of the Federal Seed Act (7 USC 1551-1610).

- (13) 'Director' means the director of health of the State of Hawaii."

SECTION 2. Section 328-2, Hawaii Revised Statutes, is amended to read:

"Sec. 328-2 Same; label, etc. 'Label' means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this part that any word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

'Immediate container' does not include package liners.

'Labeling' means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying the article.

'Package' means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include (1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; (2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

'Principal Display panel' means that part, or those parts, of a package or label that is, or are, so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display and purchase.

Whenever the principal display panel of the package is not coincident with the principal display panel of the label, the principal display panel of the package shall govern the declaration of quantity type size and the principal display panel of the label shall govern its location.

Whenever a difference of opinion exists as to which panel of a package constitutes the principal display panel, the larger panel most likely to be displayed shall be so construed.

Whenever a consumer package has more than one principal display panel, each such panel shall bear all mandatory information required by this part and by Chapter 486, H.R.S., as amended, the Weights and Measures and Uniform Packaging and Labeling Act.

"Sec. 328-2.1 Applicability to the State Weights and Measures and Uniform Packaging and Labeling Act.

(1) Nothing herein contained shall be construed to limit, alter, transfer or otherwise diminish the functions, duties, powers and responsibilities of the director of weights and measures relative to the administration and enforcement of the State Weights and Measures and Uniform Packaging and Labeling Act, Chapter 486, H.R.S., as amended; nor the director of health respecting the Hawaii Food, Drug and Cosmetic Act.

(2) Respecting the quantitative and packaging and labeling aspects of Chapter 486, H.R.S., as amended, and the requirements of any applicable rule promulgated pursuant thereto, Chapter 486, H.R.S., as amended, shall prevail. Any part herein, or other laws or parts of laws to the contrary notwithstanding, and particularly section 32 of Chapter 486, H.R.S., as amended, which is hereby repealed.

(3) In all cases where the respective directors ascertain that a 'consumer commodity', as herein defined, has been misbranded, they shall forthwith exchange all data and copies of pertinent information, to the expeditious resolution of the problem."

SECTION 3. Section 328-6, Hawaii Revised Statutes, is amended to read:

"Sec. 328-6 Prohibited acts. The following acts and the causing thereof within the State by any person are prohibited:

- (1) The manufacture, sale, delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic;
- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of sections 328-11, 328-12 or 328-17;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sections 328-22, 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;

- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under this part or the Federal Act;
- (11) The using, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with the provisions of such section;
- (12) The using by any person to his own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of sections 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;
- (13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;
- (14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or
 - (B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by clause (A) hereof; or

- (C) Making, selling, disposing of, or causing to be made, sold or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;
- (15) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;
- (16) The distribution in commerce of a consumer commodity as defined in this part, if such commodity is contained in a package, or if there is affixed to that Commodity a label, which does not conform to the provisions of this part and of regulations promulgated under authority of this part; provided, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled."

SECTION 4. Section 328-8, Hawaii Revised Statutes, is amended to read:

"Sec. 328-8 Regulations to be prescribed. Whenever in the judgment of the department of health such action will promote honesty and fair dealing in the interest of consumers, the department shall prescribe regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so prescribed shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

"Temporary permits now or hereafter granted for interstate shipment of experimental packs of food varying from the requirements of Federal definitions and standards of identity are automatically effective in this State under the conditions provided in such permits. In addition, the director may issue additional permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded. Such permits shall be subject to such terms and conditions as the director may prescribe."

SECTION 5. Section 328-10, Hawaii Revised Statutes, is amended to read:

"Sec. 328-10. Foods deemed misbranded when. A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular; or if its labeling or packaging fails to conform with the requirements of sections 328-2, 328-2.1 and 328-19.1;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulation as provided by section 328-8; or if it is an imitation of another food that is not subject to paragraph (7) of this section, unless its label bears in type of uniform size and prominence, the word 'imitation' and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in package form, unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location under the principal display panel of the label; provided, that under clause (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department of health;
- (6) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by section 328-8, unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standards, and, insofar as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in the food;
- (8) If it purports to be or is represented as:
 - (A) A food for which a standard of quality has been prescribed by regulations as provided by section 328-8 and its quality falls below such standard unless its label bears, in such manner and form as the regulations specify, a statement that it falls below such standard; or
 - (B) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by section 328-8, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as the regulations specify, a statement that it falls below such standard;
- (9) If it is not subject to paragraph (7) of this section, unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the com-

mon or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance with the requirements of clause (B) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations prescribed by the department; and, provided, further, that the requirements of clause (B) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations prescribed by the department;

- (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by regulations prescribes, as necessary in order to fully inform purchasers as to its value for such uses;
- (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations prescribed by the Department; and, provided, further, that this paragraph and paragraphs (7) and (9) of this section with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. The provisions of this paragraph regarding chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil;
- (12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded;
- (13) If it is a color additive unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the Federal Act;
- (14) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; provided that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade."

SECTION 6. Chapter 328, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 328- . Regulations for exemption from labeling requirements. The director may adopt regulations exempting from any labeling requirement of this part food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other

than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this part upon removal from such processing, labeling or repacking establishment."

SECTION 7. Section 328-13(a), Hawaii Revised Statutes, is amended to read:

"Sec. 328-13. Adding of poisonous or deleterious substance, regulation of. (a) Any added poisonous or deleterious substance, and food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of clause (B) (i) of section 328-9(1) with respect to any food, section 328-14(1) with respect to any drug or device, or section 328-18(1) with respect to any cosmetic, unless there is in effect a regulation pursuant to section 328-18.1, or subsection (b) of this section limiting the quantity of the substance, and the use or intended use of the substance conform to the terms prescribed by the regulation. While the regulation relating to such substance is in effect, a food, drug, or cosmetic shall not, by reason of bearing or containing the substance in accordance with the regulation, be considered adulterated within the meaning of section 328-9(1) (A), section 328-14(1), or section 328-18(1)."

SECTION 8. Section 328-15, Hawaii Revised Statutes, is amended to read:

"Sec. 328-15. Drugs or devices deemed misbranded when; prescriptions excepted, when. A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of section 328-19.1.
- (2) If in package form, unless it bears a label containing
 - (A) The name and place of business of the manufacturer, packer, or distributor; and
 - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by section 328-1(12) (3); provided, that under clause (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the director of health.
- (3) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, cabromal, chloral, coca, cocaine, codine, heroin

marihuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be and designated as, habit-forming, by regulations issued by the director under this part, or by regulations issued pursuant to section 502(d) of the Federal Act, unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement 'Warning—May be habit-forming.'

- (5) (A) If it is a drug unless (1) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), (i) the established name, as defined in subparagraph (B), of the drug, if such there be; and (ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs; and (2) for any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; provided further, that to the extent that compliance with the requirements of clause (1) (ii) or clause (2) of this subparagraph is impracticable, exemptions shall be allowed under regulations promulgated by the director.

- (B) As used in this paragraph (5) the term 'established name' with respect to a drug or ingredient thereof, means

- (i) The applicable official name designated pursuant to section 508 of the Federal Act, or
- (ii) If there is no such name and the drug, or the ingredient, is an article recognized in an official compendium, then the official title thereof in the compendium or
- (iii) If neither clause (i) nor clause (ii) of this subparagraph applies, then the common or usual name, if any, of such drug or of the ingredient;

provided further, that where clause (ii) of this subparagraph applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the

United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

- (6) Unless its labeling bears
 - (A) Adequate directions for use; and
 - (B) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause (A) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting the drug or device from such requirements; provided further, that articles exempted under regulations issued under section 502 (f) of the Federal Act may also be exempt.
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the director, or if consent is obtained under the Federal Act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia; provided further, that in the event of inconsistency between the requirements of this paragraph and those of paragraph (5) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (5) shall prevail.
- (8) If it has been found by the director to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the regulations issued by the director or under the Federal Act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the director shall have informed the appropriate body charged with the revision of the compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (9) (A) If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - (B) If it is an imitation of another drug; or
 - (C) If it is offered for sale under the name of another drug;

- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended or suggested in the labeling thereof;
- (11) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless
 - (A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the Federal Act, and
 - (B) The certificate or release is in effect with respect to the drug.
- (12) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless
 - (A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the Federal Act, and
 - (B) The certificate or release is in effect with respect to the drug; provided, that this paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the Federal Act. For the purpose of this subsection the term 'antibiotic drug' means any drug intended for use by man containing any quantity of any chemical substance which is produced by a micro-organism and which has the capacity to inhibit or destroy micro-organisms in dilute solution (including the chemically synthesized equivalent of any such substance);
- (13) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to such color additive prescribed under section 328-13(b);
- (14) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of
 - (A) The established name, as defined in paragraph (5) (B), printed prominently and in type at least half as large as that used for any trade or brand name thereof,
 - (B) The formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the Federal Act, and
 - (C) Such other information in brief summary relating to side effects, contra-indications, and effectiveness as shall be required in regulations issued by the director;
- (15) If a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud;
- (16) Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed

or packed shall be exempt from any labeling or packaging requirements of this part, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the director."

SECTION 9. Section 328-16(a), Hawaii Revised Statutes, is amended to read:

"Sec. 328-16 Drugs limited to dispensing on prescription. (a) A drug intended for use by man which (1) is a habit-forming drug to which section 328-15(4) applies; or (2) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or (3) is limited by an approved application under section 505 of the Federal Act or section 328-17 to use under the professional supervision of a practitioner licensed by law to administer the drug, shall be dispensed only (A) upon a written prescription of a practitioner licensed by law to administer the drug, or (B) upon an oral prescription of the practitioner, provided, the seller promptly records in his books the oral prescription in full, the kind, quantity of the drug, and directions for use, the date the oral prescription is received, the name of the seller, the name and code designation of the prescriber, and the name and address of the person for whom the drug is prescribed or the name of the owner of the animal for which the drug is prescribed, the department of health assigning such code designation to such subscriber, and such books being subject at all times to the inspection of the department or its agents, or (C) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist, and (D) its label bears the name and place of business of the seller, the serial number and date of the prescription, and the name of the practitioner. If any prescription for such drug does not indicate the time it may be refilled, if any, such prescription may not be refilled unless the pharmacist is subsequently authorized to do so by the practitioner. The act of dispensing a drug contrary to this subsection shall be deemed to be an act which results in a drug being misbranded while held for sale."

SECTION 10. Section 328-17, Hawaii Revised Statutes, is amended to read:

"Sec. 328-17 New drugs, regulation of sale, etc.; exceptions. (a) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug unless (1) an application with respect thereto has been approved and the approval has not been withdrawn under section 505 of the Federal Act, or (2) when not subject to the Federal Act, unless the drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale the drug, there has been filed with the director of health an application setting forth (A) full reports of investigations which have been made to show whether or not the drug is safe for use and whether the drug is effective in use; (B) a full list of the articles used as components of the drug;

(C) a full statement of the composition of the drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drugs; (E) such samples of the drug and of the articles used as components thereof as the director may require; and (F) specimens of the labeling proposed to be used for the drug.

(b) An application provided for in subsection (a) (2) shall become effective on the one hundred eightieth day after the filing thereof, except that if the director finds, after due notice to the applicant and giving him an opportunity for a hearing, (1) that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; or (2) the methods used in, and the facilities and controls used for the manufacture, processing, and packing of such drugs are inadequate to preserve its identity, strength, quality, and purity; or (3) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the director.

(d) The director shall promulgate regulations for exempting from the operation of the foregoing subsections of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the director, among other conditions relating to the protection of the public health, provide for conditioning such exemption upon: (1) the submission to the director before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing; (2) the manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and (3) the establishment and maintenance of such records, and the making of such reports to the director by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drugs, as the director finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b). Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any person to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such person or their representatives, except where they deem it not feasible or, in their professional judgment, contrary to the best interests of such person.

(e) In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the application shall establish and maintain such records, and make such reports to the director, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drugs, as the director may by regulation, or by order with respect to such application, prescribe; provided that regulations and orders issued under this subsection and under subsection (d) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the director deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the director.

Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the director permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(f) The director may, after affording an opportunity for hearing, revoke an application approved pursuant to this section if he finds that the drug, based on evidence acquired after such approval, may not be safe or effective for its intended use, or that the facilities or controls used in the manufacture, processing, or labeling of such drug may present a hazard to the public health."

SECTION 11. Section 328-19, Hawaii Revised Statutes, is amended to read:

"Sec. 328-19 Cosmetics deemed misbranded when. A cosmetic shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of section 328-19.1 of this part;
- (2) If in package form, unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided, that under clause (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the director;
- (3) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If its container is so made, formed or filled as to be misleading;
- (5) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to the color additive prescribed under the Federal Act. This paragraph

- shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of section 328-18(1);
- (6) Unless it is a cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed. Such cosmetic is exempted from the affirmative labeling requirements of this Part while it is in transit in commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this part."

SECTION 12. Chapter 328, Hawaii Revised Statutes, is amended by adding a new section to read:

"Sec. 328-19.1 Consumer commodities; labeling; packaging. (a) All labels of consumer commodities, as defined by this part, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.) and the regulations promulgated pursuant thereto; provided that consumer commodities exempted from such requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection;

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents; provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(d) Wherever the director determines that regulations containing prohibitions or requirements other than those prescribed by subsection (a) of this section are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the director shall promulgate with respect to that commodity regulations effective to: (1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity; (2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and

customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; (3) require that the label on each package of a consumer commodity bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or (4) prevent the nonfunctional slack-fill of packages containing consumer commodities.

For the purposes of clause (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reason other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such packages."

SECTION 13. Section 328-23, Hawaii Revised Statutes, is amended to read:

"Sec. 328-23. Inspection powers of director. The director or any of his agents are authorized upon presenting appropriate credentials to the owner, operator or agent in charge, (1) to enter at all reasonable hours any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in commerce; (2) to inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein to determine if this part is being violated; (3) to have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; provided that evidence obtained under this subsection shall not be used in a criminal prosecution of the person from whom obtained; and provided further, that carriers shall not be subject to the other provisions of this part by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers; and (4) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample. The director shall make or cause to be made examinations of samples secured under this section to determine whether or not this part is being violated."

SECTION 14. Section 328-25, Hawaii Revised Statutes, is amended to read:

"Sec. 328-25. Director's right of inspection and seizure; hearings. The director or any of his agents may in the performance of their duties enter at all reasonable hours into any creamery, factory, restaurant, store, salesroom, storage-room, drug store, or laboratory, or any place where they have probable cause to believe that food, drugs, devices, cosmetics, or consumer commodity as defined by this part are made, prepared, sold, or kept, exhibited or offered

for sale, and open any cask, tub, bottle, case or package containing or supposed to contain any such food, drug, device, cosmetic, or consumer commodity, and examine or cause to be examined the contents thereof. In case any food, drug, device, cosmetic, or consumer commodity is found to be adulterated or misbranded within the meaning of this part and the owner or person in charge thereof refuses to comply with the instructions of the director or any of his agents for the proper disposal thereof, the food, drug, device, cosmetic, or consumer commodity shall be liable to seizure. The director or any of his agents shall affix to the article or articles a tag or other appropriate marking, giving notice that the article is, or is suspected of being adulterated or misbranded, and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the director or any of his agents or by the court or judge having jurisdiction over such matters. Upon the request of the director or any of his agents, made to such court, the court shall order and direct that the food, drug, device, cosmetic or consumer commodity be seized and delivered into the custody of the court, and the same shall be held in such custody until a hearing has been held to determine whether or not it is adulterated or misbranded."

SECTION 15. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 16. If any provision of this Act, or the application of any provision of the Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

SECTION 17. This Act shall take effect on July 1, 1972.

(Approved May 30, 1972.)

ACT 152

S. B. NO. 95

A Bill for an Act Relating to Establishment of Industries in Correctional Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 354-2, Hawaii Revised Statutes, is amended to read:

"Sec. 354-2. Establishment of industries at the State prison and other correctional facilities. The department of social services and housing shall, with the advice and assistance of the department of planning and economic development, be responsible to study and evaluate any proposed or existing correctional industrial enterprise to determine if the enterprise conflicts with

*Edited accordingly.

the orderly and planned economic development of the State. The department of social services and housing shall:

- (1) Introduce productive industrial and agricultural enterprises in the prisons and institutions under the jurisdiction of the administrator of the corrections division in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities and pay to assigned inmates an hourly wage based on the income that is derived from correctional industries.
- (2) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing any industrial or agricultural enterprise involving a gross annual production of more than \$25,000 value, but in no case more than \$350,000 value, and authorize or prohibit such action. The department shall determine the gross annual production, within the limit set above, of each new enterprise at the time of its establishment. The annual production so set shall not be increased until a public hearing concerning the proposed increase has been held before the department. The department shall annually adjust the maximum gross annual production value of \$350,000 permitted for each enterprise, the purpose of such adjustment being to keep the limit in balance with changes in population of state institutions and changes in cost of production and any conflict with private business.

An industrial enterprise with a gross annual production of over \$25,000 shall not be established without a public hearing. Public notice of the hearing shall be given prior to the hearing. The department may hold public hearings on any subject within its jurisdiction."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 30, 1972.)

ACT 153

S. B. NO. 96

A Bill for an Act Relating to Compensation of Prisoners in State Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-25, Hawaii Revised Statutes, is amended to read:

"Section 353-25 Compensation for labor or training by prisoners. Every prisoner who is working within a State correctional facility or who is in such training or educational programs as the director or his agent, pursuant to law prescribes, may be allowed such graduated sums of money as the director of social services and housing by rule may determine."

*Edited accordingly.

ACT 154

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved May 30, 1972.)

ACT 154

S. B. NO. 565

A Bill for an Act Relating to Intoxicating Liquors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-36, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-36 Special conditions, retail dealers' licenses. If the premises for which a retail dealer's license is issued are not used exclusively for the sale of the liquors specified therein, then a space upon the premises shall be set aside specially for the sale of such liquors except for wine which may be displayed within and sold from any place within the licensed premises, subject, however, to such guidelines as may be established by rules and regulations of the commission."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 155

S. B. NO. 881

A Bill for an Act Relating to Agricultural Marketing Orders and Agreements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

"CHAPTER MARKETING ORDERS AND AGREEMENTS

Sec. -1. Short title. This Act shall be known as the 'Hawaii Agricultural Marketing Act'.

Sec. -2. Statement of findings and policy. The legislature finds that the marketing of Hawaiian agricultural commodities when in excess of reason-

*Edited Accordingly.

able and normal market demands creates disorderly marketing conditions. The ramifications of such conditions lead to improper preparation for market, the lack of uniform grading and classification of agricultural commodities, unfair methods of competition in marketing of agricultural commodities, and the inability of the individual producers to develop new and larger markets for Hawaii-grown agricultural commodities. As a result, there is an unreasonable and unnecessary economic waste of the agricultural wealth of the State. The legislature further finds that such conditions and the accompanying waste jeopardizes the continued production of adequate food supplies for the people of this State and other states, and prevents agricultural producers from obtaining a fair return for their labor. As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future low in relation to that of persons engaged in other gainful occupations unless such conditions are remedied. The legislature finds that disorderly marketing conditions ultimately affect the consumer who must pay higher prices for their agricultural products due to the seasonal fluctuations involved in unpredictable supply and demand. The legislature further finds that the disregard for essential health standards in agricultural products during disorderly marketing conditions directly affects the general health, safety, and public welfare of the people of this State.

The legislature declares that it is the public policy of the State to develop efficient and equitable methods in the marketing of agricultural commodities, to aid agricultural producers in restoring and maintaining their purchasing power at a more equitable level in relation to the present cost of living, and to protect the public health, safety, and general welfare of the people of the State by assuring them of the highest standards of quality in the food they purchase.

Sec. -3. Definitions as used in this chapter:

- (1) "Agricultural commodity" means any agricultural product, including but not limited to, horticultural (including floricultural), nuts, coffee, fruits, and vegetable products, livestock and livestock products, bees and honey, poultry and poultry products, egg and egg products, timber and Christmas trees, fish and fish products either in their natural state or as processed by the producer thereof or by a processor, as defined in this section, except pineapple, milk and milk products.
- (2) "Board" means the board of agriculture or its designated representative.
- (3) "Chairman" means the chairman of the board of agriculture.
- (4) "Department" means the department of agriculture.
- (5) "Distributor" means any person engaged within this State in the operation of producing, selling, marketing, or distributing an agricultural commodity in intrastate commerce which he has produced, purchased, or acquired from a producer or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but excludes a retailer, as defined in this section, except a retailer who purchases or acquires from, or handles on behalf of any producer, an agricultural commodity not subject to prior regulation by the marketing order covering the commodity.

- (6) "Grade" means the official United States or Hawaii designation applied to agricultural commodities as determined by the presence or absence of certain quality and other factors.
- (7) "Handler" means any person engaged within this State as a distributor in the business of distributing an agricultural commodity in intrastate commerce, or any person engaged as a processor in the business of processing an agricultural commodity.
- (8) "Marketable agricultural product" is a product which meets the requirements of any marketing order, marketing agreement, or regulation in effect in the area in which it is produced or handled.
- (9) "Marketing order" or "agreement" means an order or agreement issued by the board pursuant to this chapter, prescribing rules and regulations governing the processing, distributing, selling, or handling of any agricultural commodity within this State during any specified period or periods.
- (10) "Processor" means any person engaged within this State in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural product for the purposes of marketing such commodity, in intrastate commerce, but excludes a person engaged in manufacturing from an agricultural commodity, so changed in form, another and different product.
- (11) "Producer" means any person engaged within this State in the growing or producing for market of any agricultural commodity.
- (12) "Product" means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, distributor, or handler.
- (13) "Retailer" means any person who purchases or acquires any agricultural commodity for resale to the consumer for off-premise consumption.

Sec. -4. General powers and duties. (a) The department of agriculture, through the board of agriculture, shall administer and enforce this chapter. The board may delegate any of its powers and duties under this chapter to the chairman of the board or his duly designated representative. In addition, the board shall promulgate rules and regulations, pursuant to chapter 91, relative to the exercise of its powers and authority in carrying out this chapter.

(b) Whenever the board has reason to believe that the issuance of a marketing order will tend to effectuate the policy of this chapter with respect to any agricultural commodity, either upon its own motion or upon application of any producer or handler of the commodity, the board shall give notice of a public hearing upon the proposed marketing order. The board may establish or appoint a producer advisory committee of a specified commodity to investigate the need and desirability of a proposed marketing order by holding a preliminary hearing or referendum of the producers.

(c) Notice of any public hearing called for such purpose shall be given to all persons who may be directly affected by any action of the board pursuant to this chapter, and whose names appear upon lists to be filed by the agricultural industry with the board.

(d) In order to effectuate the policy of this chapter, the board may, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers, and handlers of any agricultural commodity, regulating the preparation, sale, and handling of that agricultural commodity.

The marketing agreement shall be binding only upon those signing the agreement. The execution of the marketing agreement shall in no way affect the issuance, administration, or enforcement of any marketing order provided for in this chapter. The board may issue a marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The board, in its discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for in this chapter.

Sec. -5. Records; information, hearings. (a) The board may require all processors or distributors subject to any marketing order issued pursuant to this chapter, to maintain books and records reflecting their operations under the marketing order, and to furnish to the board such information as may be requested relating to operations under the marketing order, and to permit inspection by the board of portions of the books and records relating to operations under the marketing order.

(b) Information obtained by the board shall be confidential and shall not be disclosed by the board except when the public interest demands disclosure or under order of court.

(c) The board may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind. Upon failure or refusal of any witness to obey any subpoena, the board may petition the circuit court, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court.

(d) No person shall be excused from attending and testifying or from producing documentary evidence before the board in obedience to a subpoena of the board on the grounds that the testimony or evidence, documentary, or other information, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or information concerning which he may be required to testify, or produce evidence, documentary or otherwise, before the board in obedience to a subpoena issued by the board; except for perjury committed in testifying or producing evidence.

Sec. -6. Marketing order issued. (a) After notice and hearing and subject to section -10, the board may issue a marketing order if it finds that the marketing order will:

- (1) Re-establish or maintain prices received by producers for an agricultural commodity at a level which will give the commodity a purchasing power, equivalent to the purchasing power of the commodity in the base period. The base period shall be a period in which the board finds that the volume of production of a commodity was adequate to supply the requirements of consumers and the net returns to producers were sufficient to provide an adequate standard of living to the farm operator and his family;
 - (2) Approach all equality of purchasing power at as rapid a rate as is feasible in view of the market demand for the commodity;
 - (3) Prevent the unreasonable or unnecessary waste of agricultural wealth because of improper preparation of an agricultural commodity for market, lack of uniform grading and inspection, or excessive shipments to markets;
 - (4) Protect the interests of consumers of a commodity, by exercising the powers of this chapter only to the extent necessary to effectuate the policy of this chapter.
- (b) In making the findings set forth in subsection (a), the board shall take into consideration all facts available with respect to the following:
- (1) The quantity of the agricultural commodity available for distribution;
 - (2) The quantity of the agricultural commodity normally required by consumers;
 - (3) The cost of producing the agricultural commodity as determined by available statistics and surveys;
 - (4) The purchasing power of consumers as indicated by reports and indices;
 - (5) The level of prices of commodities, services, and articles which the farmers commonly buy;
 - (6) The level of prices of other commodities which compete with or are utilized as substitutes for the agricultural commodity; and
 - (7) Such other factors as are necessary to make an intelligent determination of the order.

Sec. -7. Administrative committee. (a) Any marketing order issued under this chapter shall provide for the establishment of an administrative committee to administer the order in accordance with its terms and provisions. The members of the committee and alternate members shall be elected by the industry from nominations submitted by the industry and shall hold office until the expiration of term or industry's voluntary termination of the order or the board's termination of the order, whichever occurs first. If the marketing order directly affects only producers of a particular commodity the members of the committee shall be producers. If the marketing order directly affects only handlers of a particular commodity the members of the committee shall be handlers. If the marketing order directly affects both producers and handlers of a particular commodity the committee shall be composed of both producers and handlers. The number of producers or handlers upon any such committee shall be the number of producers or handlers the board finds necessary to properly administer the order; provided, that no committee shall consist of less than seven members.

(b) No member of an administrative committee shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties. The board may authorize the chairman to employ necessary personnel, including an attorney approved by the attorney general, fix their compensation and terms of employment, and incur such expenses, to be paid by the board from moneys collected as provided in sections -14 and -15 as the board may deem necessary to enable the committee to perform its authorized duties. The duties of the committee are:

- (1) To administer the marketing agreement or order, subject to the approval of the board;
- (2) To recommend to the board administrative rules and regulations relating to the marketing agreement or order;
- (3) To receive and report to the board complaints of violations of the marketing agreement or order;
- (4) To recommend to the board amendments to the marketing agreement or order or termination or suspension of a marketing agreement or order;
- (5) To submit to the board for approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of this chapter, and to submit for approval a method of assessing and collecting funds, necessary for the administration of the marketing agreement or order;
- (6) To assist the board in the collection of necessary information and data as the board may deem necessary for the proper administration of this chapter;
- (7) To assist the board in the collection of assessments, as provided in section -14; and
- (8) Such other matters as may be necessary, subject to the approval of the board, to effectively administer the marketing agreement or order.

Sec. -8. Contents of marketing order. Any marketing agreement or order issued by the board pursuant to this chapter may contain any of the following provisions for regulating, within this State, the handling, sale, and operations of processing or distributing by producers, handlers, or distributors of any agricultural commodity:

- (1) Provisions for determining the existence and extent of the surplus of any agricultural commodity or of any grade, size, or species or other classifications or quality thereof, and providing for the control and disposition of the surplus, and for equalizing the burden of the surplus elimination or control among the producers, processors, distributors, or other handlers affected.
- (2) Provisions for limiting the total quantity of any marketable agricultural product or of any grade or grades, size or sizes, or species or other classifications, or quality or portions, or combinations thereof, which may be processed, distributed, or otherwise handled by all persons engaged in such processing, distributing, or handling, during any specified period or periods. The total quantity of any commodity so regulated and permitted to be processed, distributed, or otherwise

handled, shall not be less than the quantity which the board finds reasonably necessary to supply the market demand of consumers for the commodity.

- (3) Provisions for allotting the quantity of any agricultural commodity or of any grade, size, species, or other classification or quality thereof, which each handler may purchase or acquire from, or handle on behalf of any and all producers thereof, during any specified period or periods under a uniform rule applicable to all handlers under the marketing order based upon the amounts produced or sold by the producers in a prior period which the board finds to be representative, or upon the current season's production or sales of the products, or both, so that the total quantity of the commodity, or of any grade or grades, size or sizes, species or other classifications, or quality or portions, or combinations thereof, purchased or handled shall be apportioned equitably among the producers.
- (4) Provisions for allotting the quantity of any agricultural commodity or of any grade or grades, size or sizes, quality or portions, or species or other classifications, or combinations thereof, which each handler may process, distribute, or handle under a uniform rule, applicable to all handlers based upon quantities of the commodity or of any grades, size or quality, species, or other classifications thereof of the current season's crop which each handler has available for processing, distribution, or handling, or upon the quantities of the commodity or of any grade, size, species, or other classifications or quality thereof processed, distributed, or handled by each handler in a prior period which the board finds to be representative, or based upon both, so that the total quantity of the commodity, or any grade or grades, or size or sizes, or species, or other classifications or portions or combinations or quality thereof, processed, distributed, or handled during any specified period or periods shall be equitably apportioned among all handlers.
- (5) Provisions regulating the period or periods during which any agricultural commodity, or any grade or grades, size or sizes, or quality or portions or combinations of the commodity, may be processed, distributed, or otherwise marketed.
- (6) Provisions for the establishment of surplus, stabilization, or by-product pools for any agricultural commodity or of any grade, size, quality, or species or other classifications or conditions and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating therein of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools the administrative committee may receive the commodity from each producer or handler and may handle it according to grade, size, species, or other classifications, quality, or condition thereof and account to each producer or handler participating therein upon a pro rata basis for the net proceeds derived from the sale of the commodity.

The contents of any surplus pool shall not be marketed by the committee in any form which would compete directly with that portion of the commodity which is marketed in regular channels of trade. However, any portion of any surplus pool may be transferred by the committee upon any gratuitous basis to charitable organizations and other similar agencies under proper safeguards to insure that none of the commodity shall compete directly with the unrestricted portion of the commodity. The committee may dispose of the contents of a stabilization pool in the regular marketing channels in the manner and at the times the committee deems advisable, consistent with the maintenance of stabilized marketing conditions for the commodity. The committee may dispose of the contents of any byproduct pool only for byproducts or for other similar purposes under proper safeguards to prevent such portion of the commodity so disposed of from directly competing with that part of the commodity which is marketed in the usual form or in the regular channels of trade.

Whenever the marketing order authorizes the establishment of a surplus, stabilization, or byproduct pool, the committee may arrange for and operate any necessary facilities for the storing, financing, grading, packing, servicing, processing, preparing for market, selling, and disposing of the contents of any pools provided for in this section; provided, the committee shall not engage in commercial warehousing.

The committee may pledge all of the commodity in any pool with banks or other lending agencies for the purpose of obtaining loans. The committee shall have title, for the purpose of financing and handling, to all of the commodity in any pool.

Whenever the marketing order authorizes the establishment of any type of pool authorized in this section, the committee may create, by a uniform assessment upon producers or upon some other uniform and equitable basis, maintain, and disburse an equalization fund to be used for the removal of any inequalities between producers or handlers participating in any pool resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to byproducts, relief, or other noncompetitive purposes pursuant to the provisions of the marketing order.

- (7) Provisions for the establishment of uniform grading and inspection of any agricultural commodity delivered by producers to handlers or others engaging in the handling thereof and for the establishment of grading standards of quality, condition, size, or pack for any agricultural commodity, and the inspection and grading of the commodity in accordance with grading standards so established. The grading standards for any commodity shall not be established below any minimum standards now prescribed by law for the commodity. The department shall perform all inspections made necessary by such provisions.

- (8) Provisions for the establishment of plans for advertising and sales promotion to create new or larger markets for agricultural commodities grown in the State. The board may prepare, issue, administer, and enforce plans for promoting the sale of any agricultural commodity. Plans shall be directed toward increasing the sale of the commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the board which makes use of false or unwarranted claims in behalf of the product, or disparages the quality, value, sale, or use of any other agricultural commodity.
- (9) Provisions for price posting of any grade, size, species, or other classifications, quality, portion, or combination thereof, to be sold by the handlers and distributors only at prices filed by the handlers and distributors in the manner provided for in the order.
- (10) Provisions to require the labeling, marking, or branding of any agricultural commodity in conformity with the regulations specified in any marketing agreement or order, issued under authority of this chapter.
- (11) Provisions for establishing convenient stations for inspection, weighing, and receiving payment for any agricultural commodities sold or delivered by producers or distributors in conformity with any marketing agreement or order issued under authority of this chapter, and providing for the collection of expenses of operating the stations.
- (12) Provisions allowing an administrative committee to cooperate with any other state or federal agency whose activities may be deemed beneficial to the policy of this chapter.
- (13) Provisions to require the packaging of any agricultural commodity in containers, and to set standards for the containers, or pack thereof, in conformity with the regulations or authority contained in any marketing agreement or order issued under the authority of this chapter. The standards shall not be established below any minimum standards now prescribed by law for the commodity. The department shall perform all inspections made necessary for such provisions.
- (14) Provisions for the establishment of programs in the field of research for the improvement of production, control of insects or disease, harvesting, storing, transporting, marketing, handling, processing, or any other phase of research work which would benefit any agricultural commodity produced in Hawaii.
- (15) Provisions for establishing processing plants or necessary arrangements with persons or companies for the processing of agricultural products whose processing would tend to effectuate the policy of this chapter.
- (16) Provisions establishing methods whereby agricultural commodities and products other than marketable products may be disposed of and prohibiting dispositions thereof except as provided under the order.
- (17) Provisions for the limitation and prevention of unfair methods of competition in the marketing of agricultural commodities.

(18) Provisions for allotting, or providing methods for allotting, the quantity of the commodity or product or any grade, size, or quality thereof, which each producer may be permitted to market or dispose of in any or all markets or use classifications during any specified period or periods on the basis of:

- (A) The amount produced or marketed by the producer or produced on or marketed from the farm on which he is a producer in such prior period as the board determines to be representative, subject to such adjustment for abnormal conditions and other factors affecting production or marketing as the board may determine.
- (B) The current quantities available for marketing by the producer, or
- (C) Any combination of (A) and (B) so that the total allotment during any specified period or periods shall be apportioned equitably among producers.

Allotments hereunder may be in terms of quantities or production from given acres or other production units.

(19) Notwithstanding any other provisions of law, whenever a marketing order issued by the board pursuant to this chapter contains any terms or conditions regulating the grade, size, species, other classifications, quality, or portions, maturity, or combinations thereof, or any other provisions of this section affecting a commodity that may be marketed in the area covered by the order, the importation into the area of the same commodity shall be prohibited unless it complies with the grade, size, species, or other classifications, quality, portions, maturity, or combinations thereof, or any other provisions of this section of the commodity produced and marketed from the regulated area.

Sec. -9. Issuance of regulations. Upon recommendations from the administrative committee concerned, the chairman shall have the power, without regard to chapter 91, to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each such order or agreement. Prior to the adoption of any such administrative rules and regulations, the chairman shall cause a notice to be published at least once in a newspaper of general circulation. In addition, the notice shall be mailed to all persons whose names appear upon the lists filed with the Board. The rules and regulations established under this section shall become effective five days from the date of publication.

Sec. -10. When marketing agreement or order effective. (a) No marketing agreement or amendments, directly affecting handlers, issued pursuant to this chapter, shall become effective unless the board finds that the agreement has been assented to in writing by the handlers engaged in the operation covered by the marketing agreement who handle not less than fifty per cent of the volume of the commodity covered thereby which is processed or distributed within the area defined in the agreement and by not less than seventy-five

per cent of the number of the handlers engaged in the operation covered by the agreement.

(b) No marketing order or amendments directly affecting producers shall become effective unless the board determines that the valid votes cast in a referendum represent not less than seventy-five per cent of the total number of producers of the commodity, and the issuance of the order is approved and favored by not less than seventy-five per cent of those voting, who during the representative period, have produced not less than fifty-one per cent of the total quantity of the commodities marketed in commercial quantities within the production area specified in the marketing agreement or order, or by not less than fifty-one per cent of those voting who, during the respective period, have produced not less than seventy-five per cent of the total quantity of the commodity marketed within the marketing area specified in the marketing agreement or order.

(c) Any order issued pursuant to this section shall become effective notwithstanding the refusal or failure of handlers of more than fifty per cent of the volume of the commodity or product thereof covered by the order which is produced or marketed within the production or marketing area defined in the order, to sign a marketing agreement relating to the commodity or product thereof, on which a hearing has been held, when the board, with the approval of the governor, determines:

- (1) That the refusal or failure to sign a marketing agreement by the handlers of more than fifty per cent of the volume of the commodity or product specified which is produced or marketed within the production or marketing area specified in the marketing agreement tends to prevent the effectuation of the policy of this chapter with respect to the commodity or product; and
- (2) That the issuance of the order is the only practical means of advancing the interests of the producers of the commodity pursuant to the policy, and is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of its approval and, who, during a representative period determined by the board, have been engaged, within the production area specified in the marketing agreement or order, in the production for market of the commodity specified or who, during the representative period, have been engaged in the marketing area specified in the marketing agreement or order; or by producers who, during the representative period, have produced for market at least two-thirds of the volume of the commodity marketed within the production area specified in the marketing agreement or order.

(d) In finding whether the order is assented to in compliance with this chapter, the board may consider the expression of any nonprofit agricultural cooperative marketing association which is authorized by its members to express the approval or disapproval of the producers who are members of, or stockholders in, such nonprofit agricultural cooperative marketing association.

Sec. -11. Orders regulating processing. Subject to the provisions, restrictions, and limitations imposed in this chapter, the board may issue mar-

keting orders regulating the processing, distributing, or handling in any manner of agricultural commodities by all persons engaged in such processing, distributing, or handling of the commodities within this State.

Sec. -12. Termination of marketing order. The board shall suspend, amend, or terminate any marketing order, or any provisions of any marketing order, whenever it finds that the provision or order does not tend to effectuate the policy of this chapter; provided the suspension or termination shall not be effective until the expiration of the current marketing season. If the board finds that the termination of any marketing order is requested in writing by more than fifty per cent of the producers, who are engaged within the designated production area in the production for market of the commodity specified in the marketing order, or who produce for market more than seventy-five per cent of the volume of the commodity produced within the designated production areas for market, the board shall terminate or suspend for a specified period, the marketing order or provisions thereof; provided the termination shall be effective only if announced on or before the date specified in the order.

Sec. -13. Notice of issuance. Upon the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the board at its office and a copy of the notice shall be published in a newspaper of general circulation published in the State and in such other newspapers as the board may prescribe. No order or any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of the posting and publication. The board shall mail a copy of the notice of the issuance to all persons directly affected by the terms of the order, suspension, amendment, or termination, whose names and addresses are on file in the office of the board and to every person who files in the office of the board a written request for the notice.

Sec. -14. Budgeting and collection of fees. (a) To defray the necessary expenses incurred by the board in the formulation, issuance, administration, and enforcement of any marketing order issued by the board, the board may prepare a budget of the costs involved. The administrative committee shall prepare a budget approved by the board for the administration and operating costs and expenses, including advertising and sales promotion, when they are requested in any marketing agreement or order executed hereunder. Both budgets, with provisions for the collection of the necessary fees, the time and conditions of payment, which shall not exceed six and one-half per cent of the gross dollar volume of such sales or dollar volume or amounts handled, shall become a part of any marketing order upon adoption as provided in this chapter. Fees for a marketing order that do not provide for advertising and sales promotion shall not exceed five per cent of the gross dollar volume of the sales or dollar volume or amounts handled.

(b) Every person engaged in the production, processing, distributing, or handling of any marketable agricultural product produced in this State and directly affected by any marketing order issued pursuant to this chapter shall pay to the board at the time and in the manner prescribed by the adopted order

an assessment covering the budgets provided by this chapter, necessary to defray the expenses of the administration of the order, but in no case to exceed six and one-half per cent of the gross dollar volume.

Sec. -15. Disposition of funds. (a) Any moneys collected by the board pursuant to this chapter shall be deposited in a bank or other depository approved by the board, allocated to the marketing order under which they are collected, and disbursed by the board only for necessary expenses incurred by the administrative committee and approved by the board with respect to each separate marketing order. Funds collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the board. All expenditures by the board shall be audited annually by an independent certified public accounting firm and a copy of the audit shall be delivered after its completion to the governor and the board.

(b) Any moneys remaining in the fund, allocated to any particular agricultural commodity affected by a marketing order, may be refunded at the close of any marketing season upon a pro rata basis, to all persons from whom assessments were collected, or portions of such moneys may be carried over into the next succeeding marketing season whenever the board finds that such moneys may be required to assist in defraying the cost of operating the marketing order in succeeding seasons. Upon termination by the board of any marketing order, all moneys remaining which are not required by the board to defray the expenses of the marketing order, shall be returned by the board upon a pro rata basis, to all persons from whom assessments were collected. If the board finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund, the board may use the moneys to defray the expenses incurred by it in the formulation, issuance, or administration of any subsequent marketing order for the commodity.

Sec. -16. Deposit to defray expenses. (a) Prior to the issuance of any marketing order, the board may require the applicants to make a deposit of an amount the board deems necessary to defray the expenses of preparing and making effective the marketing order. The funds shall be received, deposited, and disbursed by the board in accordance with section -15.

(b) The board may reimburse the applicant in the amount of any deposit from any funds received by the board pursuant to section -15.

Sec. -17. Marketing areas. Marketing orders issued by the board under this chapter may be limited in their application by prescribing statewide marketing areas or portions of the State in which a particular order shall be effective; provided no marketing order shall be issued by the board unless it embraces all persons of a like class in a given area who are engaged in a specific and distinctive agricultural industry or trade within this State.

Sec. -18. Violations. (a) Every person who violates this chapter or any provision of any marketing order issued by the board shall be fined not less than \$50 nor more than \$500 or imprisoned not less than ten days nor more than six months, or both. Each day during which any violation continues shall constitute a separate offense.

(b) Upon the filing of a verified complaint charging a violation of this chapter or of any provision of any marketing order issued by the board, and prior to the institution of any court proceedings authorized in this section, the board may refer the matter to appropriate authorities of this State for action pursuant to this chapter or call a hearing to consider the charges set forth in the verified complaint. The board shall cause a copy of the complaint, together with a notice of the time and place of hearing of the complaint, to be served personally, or by mail, upon the person or persons named as respondent or respondents therein. The service shall be made at least three days before the hearing, and at the discretion of the board, shall be held in the county in which the principal place of business of the respondent is situated or in which the violation is alleged to have occurred, or in the nearest office of the department. At the time and place designated for the hearing, the board or its agents shall hear the parties to the complaint and shall make their findings based upon facts established at the hearing.

(c) If the board finds that no violation has occurred it shall dismiss the complaint and notify the parties to the complaint.

(d) If the board finds that a violation has occurred it shall enter its findings and notify the parties to the complaint. Should the respondents fail, neglect, or refuse to desist from the violation, within the time specified by the board, the board may file a complaint against the respondent or respondents in a court of competent jurisdiction as set forth hereinafter.

(e) In the enforcement of this chapter or the provisions of any marketing order issued thereunder the board may stop, search, and hold all trucks, and other conveyances where the stopping, searching, or holding is deemed necessary.

(f) In the enforcement of this chapter or any marketing order issued thereunder, the board may enter and go into or upon at any reasonable time without formal warrant, any farm, structure, or premises, and any other place where activities subject to this chapter or a marketing order or marketing agreement are involved.

(g) The board may, whenever it believes the public interest will be best served serve suitable notices or warnings, in writing, rather than resorting to prosecution for minor violations.

(h) The circuit courts of this State are vested with jurisdiction to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter.

(i) Judicial review of any finding, decision, or order of the board made pursuant to this chapter may be reviewed in the manner provided in chapter 91.

Sec. -19. Assessment a personal debt. Any assessment levied in a specified amount as determined by the board pursuant to section -13 shall constitute a personal debt of every person so assessed and shall be due and payable to the board when payment is due. In the event of failure of a person to pay any such assessment upon the date determined by the board, the board may file a complaint against the person for the collection thereof.

Sec. -20. No personal liability. The members of any administrative committee, including employees of the committee, shall not be held responsible

individually in any way whatsoever to any producer, processor, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual criminal acts. No person or employee shall be held individually for any act or omission of any other member of the committee. The liability of the members of the committee shall be several and not joint and no member shall be liable for the default of any other member.

Sec. -21. Immunity from restraint of trade law. In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with this chapter or a marketing order issued under this chapter and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding.

Sec. -22. Separability provision. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or the application, and to this end the provisions of this chapter are separable."

SECTION 2. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 156

S. B. NO. 1177

A Bill for an Act Relating to the Use and Sale of Devices Used to Fraudulently Obtain Telecommunications Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 275, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 275- Use, sale, or manufacturing of devices or equipment designed to fraudulently obtain telecommunications services; penalty. Any person who:

- (1) Makes, possesses, or uses or knowingly participates in the use by another of any instrument, apparatus, equipment, or device designed, adopted, or which can be used or employed for the purpose of:
 - (A) Obtaining telecommunications services or the transmission of a message, signal, or other communication by telephone or telegraph or over telephone, telegraph, or other communication facilities without the payment of applicable charges therefor, or
 - (B) Concealing the existence or place or origin or destination of any telecommunications services; or
- (2) Sells, gives, or otherwise transfers to another, or offers or advertises to sell, give, or otherwise transfer any instrument, apparatus, equip-

ment, or device designed, adopted or which can be used or employed for a purpose described in paragraph (1) or instructions or plans for making or assembling the same, under circumstances evidencing an intent to use or employ such instrument, apparatus, equipment, or device, or to allow the same to be used or employed for a purpose described in paragraph (1), or knowing or having reason to believe that the same is intended to be so used, or that the plans or instructions are intended to be used for making or assembling such instrument, apparatus, equipment, or device, shall be imprisoned for not less than one year nor more than five years and fined an amount not exceeding \$1,000. Any police officer may confiscate by lawful means any such instrument, apparatus, equipment, or device or instructions or plans therefor, referred to in paragraphs (1) and (2), and upon conviction the instrument, apparatus, equipment, device, instructions, or plans shall be destroyed or otherwise disposed of by the court."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 157

S. B. NO. 1345-72

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-98, Hawaii Revised Statutes, is amended to read:

§383-98 Referee. (a) In accordance with section 383-91(b), the director of labor and industrial relations shall appoint one or more referees.

(b) Subject to sections 383-125 and 383-126, each referee shall receive a salary as fixed by law, and shall also be paid such reasonable traveling and other expenses as may be incurred in the discharge of his duties, such salary and expenses to be paid out of the employment security administration fund.

(c) Section 601-16 relating to disqualification of judges shall be equally applicable to each referee and any substitute referee.

(d) In accordance with section 383-91 (b), the director may appoint one or more substitute referees to serve (1) during any temporary absence of a referee from his duties, (2) in the event a referee is disqualified to hear any appeal, (3) in the event of vacancy in the office of referee, or (4) if, for any reason, the director finds that the services of substitute referees are necessary for prompt and expeditious handling of appeals. Any substitute referee, while so serving, shall have all the powers and duties of a referee and shall receive

*Edited accordingly.

compensation for his services at the rate of \$40 per day for each day's actual attendance upon his duties and shall also be paid such reasonable traveling and other expenses as may be incurred in the discharge of his duties, the compensation and expenses to be paid out of the employment security administration fund. In case any appeal shall be referred to a substitute referee for hearing, the substitute referee shall retain jurisdiction of the appeal so referred to him, notwithstanding that the regular referee may become available, unless the reference of the appeal to the substitute referee shall be revoked by the director. The final decisions of a referee and the principles of law declared by him in arriving at such decisions, unless expressly or impliedly overruled by a later decision of a court of competent jurisdiction or of a referee, shall be binding upon any substitute referee in proceedings which involve similar questions of law.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 158

S. B. NO. 1560-72

A Bill for an Act Relating to Voting by the Handicapped.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-137, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-137 Secrecy; removal or exhibition of ballot. No person shall look at or ask to see the contents of the ballot of any voter, except as provided in section 11-139, nor shall any person within the polling place attempt to influence a voter in regard to whom he shall vote for. When a voter is in the voting booth for the purpose of marking or casting his ballot, no other person shall, except as provided in section 11-139, be allowed to enter the booth or to be in a position from which he can observe how the voter marks or casts his ballot.

In those precincts using paper ballots or electronic ballot cards no person shall take a ballot out of the polling place except for the early pickup of electronic ballot cards for delivery to the counting center and as provided in section 11-139. After voting the voter shall leave the voting booth and deliver his ballot to the election inspector in charge of the ballot boxes. The inspector shall make certain he has received the correct ballot and no other and then shall drop the ballot into the ballot box. If any person having received a ballot leaves the polling place without first delivering the ballot to the inspector as provided above, or wilfully exhibits his ballot, except as provided in section

*Edited accordingly.

11-139, after the ballot has been marked, such person shall forfeit his right to vote, and the chairman of the inspectors shall cause a record to be made of the proceeding."

SECTION 2. Section 11-139, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-139 Assistance of illiterate or disabled voter. Any voter who, by reason of illiteracy or blindness or other physical disability, is unable to mark his ballot, shall, if he so requests, receive the assistance of two election inspectors who are not of the same political party, or of any qualified voter whom he may designate, in the marking thereof. Before rendering assistance or permitting assistance to be rendered, the inspectors shall be satisfied that the physical disability exists. If a voter with a physical disability finds it unduly burdensome for him to enter the polling place, he may be handed a ballot outside the polling place but within one hundred feet thereof by the inspectors, and in their presence but in a secret manner, mark and return the same to the inspectors.

The inspectors shall enter in writing in the record book the following:

- (1) The voter's name;
- (2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires him to receive assistance; and
- (3) The name or names of the person or persons furnishing the assistance."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 159

S. B. NO. 1720-72

A Bill for an Act to Amend Section 286-47, Hawaii Revised Statutes as Amended, Relating to Certificates of Registration and Ownership of Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-47, Hawaii Revised Statutes, as amended by Act 73 section 1(a), Session Laws of Hawaii 1970, is hereby amended to read as follows:

"(3) (a) Whenever a new vehicle is first registered hereunder, the treasurer shall issue a suitable container with the certificate of registration issued for the vehicle. Every owner upon receipt of a certificate of registration

*Edited accordingly.

shall place the same in the container which must be kept within the vehicle for which it is registered and be presented at the request of a police officer, carry such certificate in a convenient receptacle attached to the vehicle and which shall be presented at the request of a police officer.

- (b) This shall not apply to State or county vehicles readily identified by the license plates and markings on sides of said vehicles.
- (c) The container shall be furnished by the treasurer, for which he shall charge a sum not to exceed 50 cents. This requirement to carry the certificate of registration with the vehicle shall not apply when such certificate is removed from the vehicle for the purpose of application for renewal, or transfer of registration or to record a change in the registration."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 160

S. B. NO. 1737-72

A Bill for an Act Relating to Chapter 317, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 317, Hawaii Revised Statutes is amended to read:

"CHAPTER 317

SECONDARY SCHOOL STUDENTS CONFERENCE

Section 317-1. Purpose. The purpose of this chapter is to provide for the establishment of an annual conference of secondary school students, (Grades 9-12) which will enable students in our secondary schools to identify, discuss and arrive at recommended solutions to major youth problems, with emphasis on school problems that require the attention and joint action by the students, the department of education and the legislature.

Section 317-2. Student Conference Committee. There is created a student conference committee composed of fourteen students to be appointed by the governor. There shall be two students from each of the seven local school districts. The Governor shall assign one or more of his staff members to assist in the conduct of the conference.

Section 317-3. Duties of the Committee. It shall be the duty of the student conference committee to:

*Edited accordingly.

- (1) Plan and coordinate all phases of the annual conference;
- (2) Set the theme and scope of the conference;
- (3) Set up the agenda of the conference;
- (4) Determine the number of participants;
- (5) Plan and provide for food, lodging and transportation of all participants;
- (6) Evaluate the worth and effectiveness of the conference; and
- (7) Consider and act on any other matter relevant to or necessary to effectuate the purpose of this chapter.

Section 317-4. Student Conference Advisory Committee. There is created a student conference advisory committee to assist and advise the student conference committee in planning, coordinating and evaluating the annual conference of students. The committee shall be composed of the chairman of the education committee of both the house of representatives and the senate and three members of the department of education appointed by the superintendent of education.

Section 317-5. Annual Conference. The annual conference of students will be held once each school year and shall not exceed three days.

Section 317-6. Evaluation Report. The evaluation report shall be in the form of a report of conference proceedings, including specific recommendation for action by the board of education or the state legislature and copies shall be forwarded to the governor, the state legislature and the board of education within 45 days after the conclusion of the conference."

SECTION 2. Material to be repealed is bracketed. New material underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon approval.

(Approved May 30, 1972.)

ACT 161

S. B. NO. 1863-72

A Bill for an Act Relating to Motor Vehicle Registration Expense.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-51, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 286-51 Registration, expense. Every certificate of registration issued under this part shall expire at midnight on December 31 of each year and shall be renewed annually before April 1 of each year upon application by the registered owner by presentation of the last issued certificate of registration or the last issued application for renewal, such renewal to take effect as of January 1 of each year; provided that the treasurer, if he has ascertained as

*Edited accordingly.

of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county, may require, as a condition precedent to the renewal, that the registered owner deposit or pay bail with respect to all such summons or citations. The certificates of registration issued hereunder shall show, in addition to all information required under section 286-47, the serial number of the tag or emblem and shall be valid during the registration year only for which they are issued. The certificates of ownership need not be renewed annually but shall remain valid as to any interest shown therein until canceled by the treasurer as provided by law or replaced by new certificates of ownership as hereinafter provided.

This part shall be administered by the treasurer in conjunction with the requirements of section 249-1 to 249-13 and shall entail no additional expense or charge to the person registering the ownership of a motor vehicle other than as provided by this section or by other laws and the cost of container provided in section 286-47; provided, that for each new certificate of ownership issued by the treasurer under section 286-52, the treasurer shall charge a fee of \$1, which fee shall be deposited in the general fund.

Notwithstanding any law to the contrary, in any county with a population of 100,000 or more, an additional fee of 50 cents shall be assessed and collected annually hereunder by the treasurer or director of finance of such county, to be used and administered by such county for the purpose of beautification and other related activities of primary highways under the ownership, control, and jurisdiction of such county, and to defray the additional cost in the disposition and other related activities of abandoned vehicles as prescribed in chapter 290 hereof, and the moneys so assessed and collected shall be placed in a revolving fund entitled, 'The Highway Beautification and Disposal of Abandoned Vehicles Revolving Fund'."

SECTION 2. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith.

SECTION 3. New material is underscored. In printing this Act, the revisor of statutes may exclude the underscoring.*

SECTION 4. This Act shall take effect as of January 1, 1973.

(Approved May 30, 1972.)

ACT 162

S. B. NO. 2068-72

A Bill for an Act Relating to the Commission on the Status of Women.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 367-2, Hawaii Revised Statutes, is amended to read:

*Edited accordingly.

"Sec. 367-2 State commission on status of women: membership, organization, etc. There is created a state commission on the status of women, within the department of budget and finance for administrative purposes, which shall consist of not fewer than fifteen nor more than twenty-five members. The membership shall include, ex-officio, a representative of the attorney general, the chairman of the commission on children and youth, the superintendent of education, the president of the university of Hawaii, the director of labor and industrial relations, the director of personnel services, and the director of social services. The remaining members shall be appointed by the governor in accordance with section 26-34. One-third of the appointed members shall be appointed initially for the term of four years, one-third for the term of three years, and one-third for the term of two years, and thereafter the terms of office of each member shall be four years. Of the appointed members there shall be at least one member from each of the counties of Hawaii, Maui, and Kauai. The members shall serve without compensation but shall be reimbursed for their necessary expenses in attending meetings of the commission and in the discharge of their duties. The members shall be selected on the basis of their interests and knowledge in, and their ability to make contributions to, the solution of problems relating to the status of women. The chairman shall be elected annually from the non-governmental members of the commission. There shall be no less than four meetings of the commission each year to be held at times and places agreed upon by the commission."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 1972.)

ACT 163

H. B. NO. 54

A Bill for an Act Relating to Standards of Conduct for State Legislators and Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended to read:

**"CHAPTER 84
STANDARDS OF CONDUCT**

PREAMBLE

The purpose of this chapter is to (1) prescribe standards of conduct for elected officers and public employees of the State as mandated by the people

*Edited accordingly.

of the State of Hawaii in the Hawaii Constitution, Article XIV, Sec. 5; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

PART I. GENERAL PROVISIONS.

Section 84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

Section 84-2 Applicability. This chapter shall apply to every nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and persons under contract to the State, but excluding justices, judges, and magistrates.

Section 84-3 Definitions.

- (1) 'Business' includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
- (2) 'Compensation' means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) 'Controlling interest' means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.
- (4) 'Employee' means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State, but excluding legislators, justices, judges, and magistrates.
- (5) 'Employment' means any rendering of services for compensation.
- (6) 'Financial interest' means an interest held by an individual, his spouse, or minor children which is:
 - (A) An ownership interest in a business.
 - (B) A creditor interest in an insolvent business.
 - (C) An employment, or prospective employment for which negotiations have begun, or
 - (D) An ownership interest in real or personal property.
 - (E) A loan or other debtor interest.
 - (F) A directorship or officership in a business.
- (7) 'Official act' or 'official action' means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) 'Official authority' includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

- (9) 'State agency' includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

PART II. SPECIFIC STANDARDS

Section 84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

Section 84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use the information for his personal gain or for the benefit of anyone.

Section 84-13 Fair Treatment. No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using State time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which he believes may be affected by legislative action.

Section 84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which he has a substantial financial interest; or
- (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity;

Except that a department head who is unable to disqualify himself on any matter described in items (1) and (2) above will not be in violation of

this subsection if he has complied with the disclosure requirements of Section 84-17; and

Except that a member of a board, commission or committee, whose participation is necessary in order to constitute a quorum to conduct official business on any matter described in items (1) and (2) above, will not be in violation of this subsection if he has complied with the disclosure requirements of Section 84-17.

(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a State or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he has official authority over that State or county agency unless he has complied with the disclosure requirements of Section 84-17.

Section 84-15 Contracts. (a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the State.

Section 84-16 Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

Section 84-17 Requirements of disclosure. (a) Every employee shall within 30 days of the commencement of public employment or term of public office, file a disclosure of his financial interests which may be affected by the state agency of which he is an employee or by a state agency which may exercise official action over such interest. The disclosure shall state the nature and extent of such interest; provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Not later than April 30 of each year, the employee shall notify the Ethics Commission of any deletion, addition, transfer or termination of any financial interest.

(b) Every legislator shall within 30 days of the commencement of public office file a disclosure of financial interests, relationships or transactions, including the nature and extent of such interest, relationship or transaction, which may be affected by a state agency, provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Not later than April 30 of each year the legislator shall notify the Ethics Commission of any deletion, addition, transfer or termination of any financial interest.

(c) The information on the disclosures shall be confidential, and the commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. The employee shall file his disclosure with the Ethics Commission. The legislator shall file his disclosure with the Presiding Officer of the legislative House of which he is a member pursuant to the rules of that House, provided that a copy of such disclosure shall be filed with the Ethics Commission. The disclosure filed with the Presiding Officer will be made reasonably available for examination by the public under procedures provided by the rules of each House.

(d) Except for legislators, or employees removable only by impeachment, the filing of disclosures pursuant to this section shall be a condition of entering upon and continuing in public employment.

(e) With respect to legislators or employees removable only by impeachment, the failure to file a disclosure pursuant to this section shall be deemed to be a violation of this chapter.

Sec. 84-18 Restrictions on post employment. (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use the information for his personal gain or the benefit of anyone.

(b) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters in which he participated as an employee.

(c) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular state agency or subdivision thereof with which he had actually served.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such

legislator or employee from appearing before any agency in relation to such employment.

Section 84-19 Violation. (a) Any favorable State action obtained in violation of any of the standards for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift or profit received by any person as a result of a violation of these standards by a legislator or employee or former legislator or employee. Action to recover under this subsection (b) shall be brought within two years of such violation under this chapter.

PART III. STATE ETHICS COMMISSION.

Section 84-21 State ethics commission established; composition. There shall be within the office of the legislative auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members to be appointed by the governor from a panel of ten persons who shall be nominated by the judicial council. Each member shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

The chairman of the commission shall be elected by the majority of the commission. The term of each member shall be four years, provided that of the five members initially appointed two members shall hold office for two years, two members shall hold office for three years and one member shall hold office for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments except that the judicial council shall nominate for gubernatorial appointment two persons for any vacancy. The governor may remove or suspend any member of the commission, upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member removed or suspended.

PART IV. ADMINISTRATION AND ENFORCEMENT.

Section 84-31 Duties of commission: complaint, hearing, determination.

- (a) The ethics commission shall have the following powers and duties:
- (1) It shall prescribe a form for the disclosures required by section 84-18 and shall establish an orderly procedure for implementing the requirements of that section.
 - (2) It shall render advisory opinions upon the request of any legislator or employee or former legislator or employee as to whether the facts and circumstances of a particular case constitute or will constitute a

violation of the standards. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the standards. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator or employee or former legislator or employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the legislator or employee or former legislator or employee in the request for an advisory opinion.

- (3) It shall initiate, receive and constitute charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings.
- (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall be formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry.
- (5) It may, from time to time make, amend, and repeal such rules and regulations, not inconsistent with this chapter as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules and regulations, when adopted as provided in chapter 91, shall have the force and effect of law.
- (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within one year after termination of State employment by a legislator or employee. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter. A proceeding shall be deemed commenced by the signing of a charge by three or more members of the commission.
- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators and employees on matters of ethics in government employment.

(b) Charges concerning the legislator or employee or former legislator or employee must be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission must be signed by three or more members of the commission. The commission shall notify in

writing every legislator or employee or former legislator or employee against whom a charge is received and afforded him an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the legislator or employee or former legislator or employee shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the legislator or employee or former legislator or employee fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. He shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge prior to the issuance of the complaint by the commission, or if the investigation discloses that the complaint should not be issued by the commission, at any time divulges any information concerning the original charge, or divulges the contents or disclosures except as permitted by this chapter, shall be guilty of a felony which shall be punishable by a fine of not more than \$5,000 or imprisonment of not more than five years, or both, or in the case of a legislator, when acting in his legislative capacity, be subject to discipline pursuant to article III, section 13, of the Hawaii Constitution as the case may be.

(d) If after twenty days following personal service, a majority of the members of the commission conclude that there is reason to believe that a violation of this chapter has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel, and (4) to have the right of cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(e) A decision of the commission pertaining to the conduct of any legislator or employee shall be in writing and signed by three or more of the members of the commission.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions.

Sec. 84-32 Procedure. (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 31 (d) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint must contain a statement of the facts alleged to constitute the violation. If within thirty days after the referral, the legislature has not disposed of the complaint, the commission shall make the charges public. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission after due hearing determines pursuant to section 31 (d) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall refer the decision to the governor who shall take appropriate action within sixty days and shall notify the commission of the action taken.

If it is found that a violation has occurred, the governor or the ethics commission by a vote of four members may make the findings and the record of the proceeding public, taking into account the seriousness of the violation.

This subsection shall not prevent the commission from reporting decisions in the yearly summaries required by section 84-31 (f).

(c) With respect to former employees: the commission may with the consent of four commissioners issue a public statement of its findings and conclusions, and the attorney general may exercise whatever legal or equitable remedies which may be available to the State.

Section 84-33 Disciplinary action for violation. In addition to any other powers of the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the standards of this chapter.

Section 84-34 No compensation. The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

Section 84-35 Staff. The ethics commission may employ and at pleasure remove such persons as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapters 76 and 77.

Section 84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission,

or other agency of the State cooperation and assistance in the performance of its duties.

Section 84-37. Concurrent Jurisdiction. Notwithstanding any provision contained herein, pursuant to Article III, Section 13 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of this chapter or its rules.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material and the underscoring.*

SECTION 3. This Act shall take effect upon its approval, provided that section 84-18 shall apply only to employees who terminate their services on or after the effective date of this Act.

(Approved June 1, 1972.)

ACT 164

H. B. NO. 2047-72

A Bill for an Act Relating to Actions By and Against the State, Amending Chapters 661 and 662 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 661 of the Hawaii Revised Statutes is amended as follows:

(a) Section 661-1 is amended by deleting from the second and third lines the words "and exceptions to the supreme court in the manner now" and inserting in lieu thereof the word "as"; by deleting from the ninth line the words "either house of"; by deleting from the tenth line the word "suit" and inserting in lieu thereof "action"; and by deleting from the fourteenth line the words and punctuation "setoffs," and the words and punctuation "claims for damages,".

(b) Section 661-2 is amended to read as follows:

"Sec. 661-2. Judgment against claimant when. Upon the trial of any cause in which any counterclaim or other demand is set up on the part of the State against any person making claim against the State, the court shall, without the intervention of a jury, hear and determine the claim or demand both for and against the State and claimant; and if upon the whole case it finds that the claimant is indebted to the State, it shall render judgment to that effect."

(c) Section 661-3 is amended to read as follows:

"Sec. 661-3. No jurisdiction, when. No person shall file or prosecute under this chapter any claim for or in respect to which he or any assignee of his has pending an action against a person who, at the time when the claim alleged in the action arose, was, in respect thereto, acting or professing to act, directly or indirectly, under the authority of the State."

*Edited accordingly.

(d) Section 661-4 is amended by changing the word "Suit" in the caption to read "Action", by deleting from the second line the word "any" and inserting in lieu thereof the word "a", and by deleting from the last line the words "as aforesaid" and inserting in lieu thereof "under this chapter".

(e) Section 661-5 is amended to read as follows:

"Sec. 661-5. Limitations on action. Every claim against the State, cognizable under this chapter, shall be forever barred unless the action is commenced within two years after the claim first accrues; provided, that the claims of persons under legal disability shall not be barred if the action is commenced within one year after the disability has ceased."

(f) Section 661-6 is amended to read as follows:

"Sec. 661-6. Complaint; assignments. The claimant shall, in all cases, in addition to setting forth his claim, show:

- (1) What persons are owners of the claim or interested therein, with their citizenship.
- (2) The names and citizenship of all persons who have been at any time owners of the claim or any part thereof or interest therein, all of whom shall be citizens of the United States or persons eligible under section 661-4.
- (3) That no assignment or transfer of the claim, or of any part thereof or interest therein, has been made, except as stated in the complaint. Section 634-31 shall be applicable."

(g) Section 661-9 is amended by deleting from the second line the words "exceptions or".

(h) Section 661-10 is amended by changing the word "Suits" in the caption to read "Actions", by deleting from the sixth and seventh lines the words "a suit or suits" and inserting in lieu thereof "an action or actions", by deleting from the eighth line the word "suits" and inserting in lieu thereof "actions", and by deleting from the next to the last line and the last line the words "or respondents".

(i) Section 661-11 is amended to read as follows:

"Sec. 661-11. Tort claims against State where covered by insurance. This section applies to an action where (1) the State is a party defendant; (2) the subject matter of the claim is covered by an insurance policy entered into by the State or any of its agencies; and (3) chapter 662 does not apply. No defense of sovereign immunity shall be raised in an action under this section. However, the State's liability under this section shall not exceed the amount of, and shall be defrayed by, such insurance policy.

An action under this section is not subject to the provisions of sections 661-1 to 661-10."

(j) The word "SUITS" in the chapter heading is changed to read "ACTIONS".

SECTION 2. Chapter 662 of the Hawaii Revised Statutes is amended as follows:

(a) Section 662-2 is amended by deleting the second sentence.

(b) Section 662-6 is amended by adding a new paragraph to read as follows:

“Sections 661-2 and 661-9 shall apply to actions under this chapter.”

(c) Section 662-9 is amended to read as follows:

“**Sec. 662-9. Costs.** In an action under this chapter, court costs and fees as set by law shall be allowed to the successful claimant. Attorney’s fees may be allowed as provided by section 662-12.”

(d) Section 662-14 is amended to read as follows:

“**Sec. 662-14. Exclusiveness of remedy.** The authority of the State or any state agency to sue and be sued in its own name shall not be construed to authorize any other actions against the State or such agency on claims for torts of its employees, and the rights and remedies provided by this chapter and section 661-11 shall be exclusive.”

(e) Section 662-15 is amended by deleting from the third line of paragraph numbered (1) the words “whether such statute or regulation be valid” and inserting in lieu thereof “whether or not such statute or regulation is valid”, and by deleting from the last line of paragraph numbered (1) the word “be” and inserting in lieu thereof the words “has been”.

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect July 1, 1973, provided that the amendment of section 662-2 shall apply to all actions commenced or pending on or after July 1, 1973.

(Approved June 1, 1972.)

ACT 165

H. B. NO. 2110-72

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The unencumbered and unexpended balance of the \$67,000 and the sum of \$125,500 appropriated to the university of Hawaii by Act 146, Session Laws of Hawaii, 1971, for the fiscal years 1971-72 and 1972-73, respectively, to complete the research and development phase of establishing a school of law, are reappropriated as non-capital investment costs or operating costs for establishing and maintaining a law school at the university of Hawaii for the fiscal biennium 1971-73.

SECTION 2. The University of Hawaii is authorized to establish, and with the approval of the governor fill, not more than 4.3 law school positions in fiscal year 1972-73.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

ACT 166

H. B. NO. 2509-72

A Bill for an Act Relating to Exemption from Mandatory Firearm Registration.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 134-2 of the Hawaii Revised Statutes is amended to read as follows:

"Sec. 134-2. Registration, mandatory. Every person arriving in the State who brings with him firearms of any description, whether useable or unuseable, servicable or unservicable, modern or antique, or ammunition of any type and description, shall within forty-eight hours after arrival, register the same with the chief of police of the county of his place of business, or if there be no place of business, his residence, or if there be neither place of business nor residence, his place of sojourn.

Registration shall not be required for: (a) any device designed to fire loose black powder; (b) a device not designed to fire or made incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition; and/or (c) all unserviceable firearms and destructive devices registered with the Director, Alcohol, Tobacco, and Firearms Division of the U.S. Internal Revenue Service as provided in Part 179 of Title 26, Code of Federal Regulations.

The registration shall be on such forms as may be designated by the department of the attorney general and shall include a description of the class of firearms and ammunition owned by him, or in his possession, together with the name of the maker and the factory number, if known or ascertainable, and the source from which possession was obtained.

Within ten days after the end of each month the respective chiefs of police shall furnish to the department duplicate copies of all registrations made during the preceding month.

No fee shall be charged for the registration.

Any person who fails to comply with this section shall be fined not more than \$250."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

ACT 167

S. B. NO. 466

A Bill for an Act Relating to Examinations of the Board of Medical Examiners.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended to read:

*Edited accordingly.

"Sec. 453-4 Qualifications for examination. Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless he has passed an examination and has been found to be possessed of the necessary qualifications.

Before any applicant shall be eligible for such examination he shall furnish proof satisfactory to the board that:

- (1) He (A) is a citizen of the United States; or (B) if not a citizen of the United States, has declared his intention to become a citizen of the United States, as provided by law;
- (2) (A) He has been a resident of the State for at least three months; except that a person who has changed his residence to the State shall have been continuously physically present in the State for at least three months of his legal residence in the State.
- (3) He is of good moral character;
- (4) (A) He is a graduate of a medical school or college approved by the council on medical education and hospitals of the American medical association; or
(B) He is a graduate of a foreign medical school, who has had at least three years' medical experience or training in a hospital approved by the council on medical education and hospitals of the American medical association for the internship or residency, and has passed the qualifying examination of the educational council for foreign medical graduates or its successor.
- (5) He has served an internship of at least one year in either a hospital which has been certified or approved for the training of interns and resident physicians by the American medical association, council on medical education and hospitals, or if outside the United States, in a hospital which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such American medical association approval, or has completed one year of residency training in a program approved by the American medical association, council of medical education and hospitals.

Diplomates of the national board of medical examiners or those who have passed the federation licensing examination (FLEX) with scores deemed satisfactory by the board and who meet the requirements of paragraphs (1), (2), (3), (4), and (5) above, shall be licensed without the necessity of any further examination."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

*Edited accordingly.

ACT 168

S. B. NO. 1436-72

A Bill for an Act Relating to the Establishment of a Legislative Scientific Advisory Committee.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . LEGISLATIVE SCIENTIFIC ADVISORY COMMITTEE

Sec. 23- Findings and purpose. The legislature finds that much of today's legislation entails scientific and technological implications and that the committee chairmen of the various legislative committees and individual legislators have frequently called upon the members of the State's scientific community to assist with questions of fact or technological assessment. The legislature further finds that the need for such scientific and technological aid is becoming more necessary with the rapidly growing technical and scientific advances being made in today's society. The purpose of this part is to provide the legislature with the necessary scientific and technical resources to aid them in making judicious decisions on legislation involving scientific or technical matters by establishing a legislative scientific advisory committee.

Sec. 23- Definition. As used in this part, "committee" means the legislative scientific advisory committee as created in this chapter.

Sec. 23- Establishment. There is established in the office of the legislative auditor for administrative purposes, a legislative scientific advisory committee for the purpose of aiding the legislature in evaluating and assessing the scientific and technical implications of proposed legislation.

Sec. 23- Composition; appointment. (a) The committee shall be composed of eleven members, all of whom except for the chairman shall be professional scientists representing the broad spectrum of the scientific community.

(b) The ombudsman, the legislative auditor, and the director of the legislative reference bureau shall submit a list of twenty-one names to the president of the senate and the speaker of the house of representatives who shall appoint the members of the committee.

(c) The chairman of the committee, who shall not be a scientist, shall be appointed by the president of the senate and the speaker of the house of representatives and shall be an ex officio member of the committee.

Sec. 23- Term of appointment. The members of the committee shall be appointed for three-year terms except that five of the initial appointees shall serve a term of five years.

Sec. 23- Powers and duties. The committee shall:

- (1) Respond to requests for scientific and technical information from the legislature; and

- (2) Establish the necessary ad hoc subcommittees for the purposes of gathering information; provided that at least one member of the committee shall be a member of each ad hoc committee and shall report to the committee the activities of the ad hoc subcommittee.

Sec. 23- Expenses. The members of the committee shall serve without compensation but shall be reimbursed for all necessary expenses incurred in the performance of their duties."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

ACT 169

S. B. NO. 1819-72

A Bill for an Act Relating to a Conference of College and University Student Leaders and Making an Appropriation Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this bill is to provide for the establishment of an annual conference of college and university student leaders, which will enable student leaders in Hawaii's public and private colleges and universities to identify, discuss and arrive at recommended solutions to major youth problems, with the emphasis being on school related problems which require the joint attention and action by the students, the public and private college and university systems in Hawaii, and the Hawaii State Legislature.

SECTION 2. There is created a student conference committee composed of not less than fifteen student leaders who will be appointed by the Governor of the State of Hawaii to serve a term of one year from the time of appointment. The student shall be selected on a basis of one student per private and public accredited baccalaureate degree-granting institution, and each community college. Three students shall be selected to represent the University of Hawaii, Manoa campus on a ratio of two undergraduates and one graduate student. The Governor shall assign one or more of his staff members to assist the conference committee in the planning and the conduct of the conference.

SECTION 3. It shall be the responsibility of the student conference committee to:

- (1) Set the theme and scope of the conference;
- (2) Plan and coordinate all phases of the conference;
- (3) Establish the agenda for the conference;
- (4) Evaluate and incorporate into its planning all relevant matters necessary to effectuate the purpose of this Act;
- (5) Prepare an evaluation report on the workings of the Conference.

SECTION 4. There is created a legislative advisory committee which shall be composed of both the chairman and vice chairman of the Senate committee and the House committee on Higher Education. The legislative advisory committee shall serve in an advisory role to the student conference committee, lending advice and assistance to the planning and the conducting of the conference.

SECTION 5. The annual conference of college and university student leaders will be held during the fall semester no later than the first (1st) of November, and shall not exceed three days.

SECTION 6. The evaluation report shall be in the form of a publishable document; including but not limited to the pre-conference planning, the conference proceedings, and any and all final recommendations made by the conference. The report shall be addressed to the Governor of the State of Hawaii, and to the members of the Hawaii State Legislature. Copies of this report and its findings shall be forwarded to the Governor and the Legislators not less than twenty (20) days prior to the convening of the next legislative session.

SECTION 7. There is appropriated out of the general revenues of the State the sum of \$7,000 or so much thereof as may be necessary, to the Governor's office for the purpose of funding the cost of the conference, as well as other usual costs inherent in conducting conferences of this type. Of the monies appropriated the sum of \$1,500 shall be used to hire student members on summer stipend as researchers.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

ACT 170

S. B. NO. 1919-72

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 356-39, Hawaii Revised Statutes, is redesignated and amended to read:

"Sec. 359G-10.1 Assistance to governmental agencies and persons. The authority may provide assistance and aid to a public agency or a person in developing and constructing new housing and rehabilitating old housing for the elderly of low income, other persons of low income and persons displaced by any governmental action, by making available long-term, low-interest mortgage loans or interim construction loans from the proceeds of tax-exempt general obligation bonds, the payment of the principal and interest of which shall be reimbursed to the general fund from revenue and to be sold on the open market. The authority may charge service fees and premiums upon the issuance of any mortgage or interim construction loan under this section. The interest paid upon such loans, and the service fees and premiums shall be paid into the dwelling unit revolving fund created by section 359G-10.

The authority may obtain from any federal agency any insurance or guarantee for the payment of interest or principal, or both, on any obligations issued pursuant to the provisions of this section.

The director of finance may issue general obligation bonds of the State pursuant to part I of chapter 39 in an amount not to exceed \$15,000,000 to effectuate the purposes of this section subject to prior approval of the governor."

SECTION 2. Chapter 359G, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending section 359G-5 to read:

"Sec. 359G-5 Eminent domain, exchange or use of public property. The authority may, through exchange, voluntary negotiation or by eminent domain, acquire any private land in the State for the purpose of this chapter. The authority shall exercise the power of eminent domain in the same manner as provided in chapter 101. The exchange of land shall be in accordance with the provisions of chapter 171, provided that anything contained in section 171-50 to the contrary notwithstanding, when state lands are exchanged for private lands, which private lands are classified for intensive agricultural use, the authority shall determine the agricultural productivity of the private lands and, whenever and wherever possible, exchange so much state lands as shall be sufficient to approximate or equal the productivity of the private lands so acquired by the State.

Except as hereinafter set forth in this paragraph, the authority may also develop state lands but not federal lands, state monuments or historical sites or parks and subject to the prior approval of the land use commission in the case of agricultural land and the prior approval of the board of land and natural resources in the case of conservation land. Whenever it proposes to develop in public lands it shall file with the department of land and natural resources a petition setting forth such purpose and such petition shall be conclusive proof that the use to which the property is sought to be put is a superior public use to that to which it has already been appropriated. The fair market value of the public land may be paid by the authority and computed as cost or subsidized by the State subject to reimbursement under section 359G-9. The authority shall not, however, possess the power to develop, or develop, any public lands where the possession of such power or such development (1) would endanger the receipt of any federal grant or impair the eligibility of any public body for a federal grant or prevent the participation by the federal government in any governmental program or (2) would impair any covenant between the State or any county or any department or board thereof and the holders of bonds issued by the State or such county, department or board."

2. By amending section 359G-7 to read:

"Sec. 359G-7 Financing. The director of finance is hereby authorized to issue general obligation bonds of the State in the amount of \$60,000,000, for the purposes of this chapter. Pending the receipt of funds from the issuance and sale of general obligation bonds, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond funds, the general fund shall be reimbursed. The proceeds of the bonds may be used for any of the purposes set forth in subsection 359G-4(e) including permanent financing. Prior to the issuance and sale of the general obligation bonds interest on any interim money shall be computed at the greater of seven per cent or one per cent more, rounded to the nearest one eighth of one per cent, than that paid by the State on the general obligation bonds most recently issued by it. After the issuance and sale of the general obligation bonds, interest on any interim money shall be computed at

one per cent more, rounded to the nearest one eighth of one per cent, than that paid by the State for the general obligation bonds. Interest so computed shall be a cost of the project to be prorated over the units. In the event the rate of interest on an interim loan made pursuant to the third preceding sentence is higher than the rate ultimately determined in accordance with the second preceding sentence, the authority may refund the difference."

3. By amending section 359G-9 to read:

"Sec. 359G-9 Restrictions on transfer and use of dwelling units. (a) For a period of ten years after a dwelling unit is purchased from the authority or an agreement of sale is executed, whether on fee simple or leasehold property the following restrictions shall apply to the use and transfer of the unit and the property:

- (1) Any dwelling unit sold by the authority shall be owner occupied. Violation of this provision is sufficient cause for the authority to repurchase the dwelling unit as provided for in paragraph (2);
- (2) Title to the dwelling unit and the property or the lease may not be transferred except to the authority, and then only at a price which shall not exceed the greater of the amount of the original cost to the purchaser or the fair market value of the premises less any amounts subsidized by the State, as determined by the authority, and less also interest thereon at the same rate as that paid by the purchaser on his mortgage or other security agreement, provided, however, that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, who would otherwise qualify under the rules and regulations established by the authority.
- (3) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority or by any fee owner in the case of a lease shall expressly contain the restriction on transfer and use of the dwelling unit as prescribed in this section.

(b) Any time after ten years have elapsed from the date a dwelling unit is purchased from the authority, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions, provided that the purchaser shall be required to pay to the authority:

- (1) The balance of the mortgage note, agreement of sale or amount owing under similar instrument.
- (2) To the extent that any profit is realized, any subsidy made by the authority or the State not counted as cost under section 359G-8 but charged to the dwelling unit by good accounting practice as determined by the authority whose books shall be prima facie evidence of the correctness of the cost.
- (3) To the extent that any profit is realized, interest on the amount determined under paragraph (2) above computed from the date of occupancy, at the same rate as that paid by the purchaser on his mortgage or other security agreement.
- (4) If any proposed sale or transfer would not generate sufficient profit to enable the repayment of all sums under paragraphs (1), (2) and (3)

above the authority shall have the right of first refusal to repurchase the unit. These provisions of subsection (b) shall be incorporated in any deed, lease, agreement of sale, mortgage or other instrument of conveyance issued by the authority.

(c) Notwithstanding the provisions of subsections (a) and (b) above the authority may at any time consent to the sale or transfer of a unit for such a price and on such terms as the authority may determine, in accordance with adopted rules or regulations, to preserve the intent of those provisions without the necessity for the State to repurchase the unit.

(d) Notwithstanding the provisions of subsection (a) and (b) above, the authority may at any time waive the restrictions of subsections (a) (2), (a) (3), and (b), if the State makes no subsidy in the form of unrecovered land costs or unrecovered development costs, except such tax relief granted under section 359G-15, and except such costs, if any, (1) allocable to the staff of the authority in the administration of the partnership, (2) for training of labor under section 359G-13, and (3) for the development of innovative techniques and research under section 359G-14.

(e) If the restrictions of subsections (a) (2), (a) (3), and (b) are waived by the authority pursuant to subsection (d) above, then in such case, for a period of ten years after a dwelling unit is purchased from the authority or an agreement of sale is executed, whether on fee simple or leasehold property, the following restrictions shall apply to the use and transfer of the unit and the property:

- (1) Any dwelling unit sold by the authority shall be owner occupied. Violation of this provision is sufficient cause for the authority to repurchase the dwelling unit as provided for in subsection (e) (2);
- (2) Title to the dwelling unit and the land or the leasehold interest may not be transferred except to the authority, at a price which shall not exceed the greater of the amount of the original cost to the purchaser or the fair market value at the time of transfer to the authority; provided that, in the event the Department of Housing and Urban Development, through its Federal Housing Administration, shall at any time become the owner of said dwelling unit and the land or leasehold interest pursuant to a contract of mortgage insurance, this right to repurchase by the authority shall be suspended and be of no force and effect during the period of such ownership, the said right to repurchase being automatically reinstated and fully effective and applicable from and after any period of such ownership; and provided further that title to a dwelling unit and the land or leasehold interest may pass to a family member by devise or through the laws of descent, who would otherwise qualify under the rules and regulations established by the authority.
- (3) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority or by any fee owner in the case of a lease pursuant to this subsection shall expressly contain the restriction on transfer and use of the dwelling unit as prescribed in this subsection.

(f) Anything in subsections (a), (b), (c), (d), and (e) above to the contrary notwithstanding, whenever a mortgage on a dwelling unit has been guaranteed by an agency or instrumentality of the United States, the transfer of the unit by the purchaser thereof shall not be restricted to the authority after ten years have elapsed from the date the unit is purchased from the authority."

4. By amending section 359G-10 to read:

"Sec. 359G-10 Revolving fund. There is created a dwelling unit revolving fund. The funds appropriated for the purpose of this chapter and all moneys received or collected by the authority under the provisions of this chapter shall be deposited in the revolving fund. The proceeds in the fund shall first be used to reimburse the general fund to pay the principal and interest on general obligations bonds issued for the purposes of this chapter, then for the necessary expenses in administering the chapter, and finally for carrying out the purposes of this chapter."

5. By adding a new section to be numbered and to read:

"Sec. 359G-12.1 Mortgage guaranty agreements. (a) In order to induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the authority may enter into guaranty agreements with such officials whenever (1) the purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligations or income characteristics, (2) the purchaser-mortgagor in question is a 'displaced person' as defined in chapter 111 and the guaranty agreement will enable him to obtain suitable replacement housing in accordance with that chapter and (3) the authority finds that such purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if he were to receive budget, debt, management and relating counseling. Such guaranty agreements may obligate the authority to (1) provide or cause to be provided such counseling and (2) indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.

(b) The total of (1) guaranties made pursuant to this section and (2) guaranties made pursuant to section 359G-12 shall not exceed \$10,000,000."

6. By amending section 359G-20 to read:

"Sec. 359G-20 Issuance of additional bonds. When requested by the authority, the director of finance shall issue from time to time general obligation bonds not exceeding \$20,000,000, the proceeds of which shall be deposited into the dwelling unit revolving fund created by section 359G-10, and which shall be used for the purpose of making downpayment loans as provided herein.

All moneys received or collected by the authority to repay downpayment loans shall also be deposited into the dwelling unit revolving fund created by section 359G-10."

7. By amending section 359G-29 to read:

"Sec. 359G-29 Further issuance of additional bonds. When requested by the authority, the director of finance shall issue general obligation bonds not exceeding \$10,000,000, the proceeds of which shall be deposited into the dwelling unit revolving fund created by section 359G-10 for the purposes of this part.

All income received by the State on the investment of state funds under this program shall be dedicated to the dwelling unit revolving fund created by section 359G-10. Income and all moneys received or collected by the authority under this program shall be deposited into said fund.

8. By adding a new section to be numbered and to read:

"Sec. 359G-30 Arbitrage provision. Any other provision of law to the contrary notwithstanding, neither the authority nor the director of finance shall make loans or purchase mortgages from the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of such bonds, at a rate of interest which would cause any general obligation bond of the State to be an 'arbitrage bond,' as defined in subsection (d) (2) of section 103 of the Internal Revenue Code of 1954 of the United States of America as now in effect, subject to treatment under subsection (d) (1) of said section 103 as an obligation not described in subsection (a) (1) of said section 103."

SECTION 10. [sic] All loans, transactions and agreements of any nature whatsoever heretofore entered into under the authority or purported authority of section 356-39, Hawaii Revised Statutes, are hereby validated, ratified, confirmed and approved.

SECTION 11. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 12. This Act shall take effect upon its approval.

(Approved June 1, 1972.)

ACT 171

S. B. NO. 1970-72

A Bill for an Act Relating to Legislative Support.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish an office of the legislative reference bureau under the legislature and to (1) transfer the legislative reference bureau functions from the University of Hawaii to the newly created office of the legislative reference bureau and (2) place within the newly created office of the legislative reference bureau for administrative purposes only the office of the revisor of statutes.

*Edited accordingly.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER
OFFICE OF THE LEGISLATIVE REFERENCE BUREAU

Sec. -1 Legislative reference bureau; director, appointment, tenure, removal, compensation, vacancy. The office of the legislative reference bureau is established. The legislature, by a majority vote of each house in joint session, shall appoint a director for the bureau who shall serve for a period of six years and thereafter until a successor shall have been appointed. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the director from office, but only for neglect of duty, misconduct, or disability.

If the director dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the director shall become the acting director until a new director is appointed.

The salary of the director shall be the same as the salary of the circuit court judges. The compensation of the director shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

Sec. -2 Assistant, staff. The director shall appoint a first assistant and such other officers and employees as may be necessary to carry out the functions of the Bureau. All employees, including the first assistant, shall be hired by the director and shall serve at his pleasure. In determining the salary of the employees of the bureau, the director shall consult with the department of personnel services; provided that the salary of the first assistant shall not exceed the sum equal to ninety-five per cent of the salary of the director. The director and his full-time staff shall be entitled to participate in any employee benefit program plan or privilege.

Sec. -3 General purposes of bureau. The purpose of the office of the legislative reference bureau shall be:

- (1) To provide a comprehensive research and reference service on legislative problems for the legislature;
- (2) To conduct impartial research, including legal research, as may be necessary for the enactment of substantive legislation, upon request by the legislature, legislative committee or legislator, or on its own initiative;
- (3) To disseminate its research findings to the legislature on all research projects undertaken upon the request of the legislature or legislative committee;
- (4) To secure reports of various officers and boards of the State and as far as may be of the states and of the other territories of the United States and such other material, periodicals, or books as will furnish the fullest information practicable upon all matters pertaining to current or proposed legislative problems;

- (5) To secure information for the legislature, legislative committees and legislators by cooperating with the legislative reference services in the states and with the legislative service conference maintained by the council of state governments;
- (6) To maintain a reference library for use by the legislature and legislative service agencies. Subject to the priorities established by the director, reference materials may be made available to the various departments and agencies of the State and by the general public.
- (7) To draft or aid in drafting bills, resolutions, memorials, and amendments thereto, including committee reports, for the legislature, legislative committee and legislators when requested;
- (8) To control and maintain the operations of any legislative data processing program as may be established.
- (9) To serve, upon request, in an advisory capacity to the legislature and its committees on all matters within its competencies and responsibilities; and
- (10) To assist, upon request, legislative service agencies on matters within its competency."

Sec. -4 Prohibitions. Neither the director nor any employee of the bureau shall reveal to any person outside of the bureau the contents of matters of any request or statement for services except upon request of the person making the request or statement.

SECTION 3. Section 2-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 2-1 Office of revisor of statutes. There shall be within the office of the legislative reference bureau for administrative purposes only an office of revisor of statutes. The office of the revisor of statutes shall consist of a revisor and such technical, clerical, and stenographic personnel as necessary to expeditiously and efficiently discharge the duties imposed by this chapter."

SECTION 4. Part II.B., chapter 304, Hawaii Revised Statutes, is repealed.

SECTION 5. The functions of the legislative reference bureau are transferred to the office of the legislative reference bureau established by this Act as of the effective date of this Act.

SECTION 6. All officers and employees having tenure and whose functions are transferred by this Act shall, with the same pay and classification, be transferred to some other office or position within the University of Hawaii for which such officer or employee is eligible under the applicable personnel laws of the University of Hawaii as determined by the president of the university. Such officers and employees shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act; provided that subsequent changes in status may be made pursuant to chapters 76 and 77, section 304-11 and 304-13, Hawaii Revised Statutes.

SECTION 7. Pending the appointment of a director by the legislature as provided by this Act, the present director and assistant director of the legislative reference bureau of the University of Hawaii shall serve as acting director and assistant director of the bureau established by this Act. They shall discharge the duties and functions of the office and enjoy the privileges attendant thereto until a director is appointed by the legislature.

SECTION 8. Any law to the contrary notwithstanding, all monies appropriated by the Sixth Legislature, Regular Session of 1972, to the University of Hawaii for the use of the legislative reference bureau and the appropriated and unexpended funds in the biennium budget for the fiscal years beginning July 1, 1971 and ending on June 30, 1973 for the legislative reference bureau shall be transferred from the University of Hawaii to the office of the legislative reference bureau established by this Act.

SECTION 9. All records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired or held by the legislative reference bureau shall be transferred from the University of Hawaii to the office of the legislative reference bureau established by this Act, without cost to the legislature or reimbursement to the State, and without compliance with the disposal procedures or requirements, any law to the contrary notwithstanding.

SECTION 10. The office of the legislative reference bureau established by this Act shall succeed to all the rights and powers exercised, and all of the duties and obligations exercised under contracts executed by the University of Hawaii in the exercise of the functions transferred.

SECTION 11. No officer or employee shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of section 3 of this Act; provided that subsequent changes in status of civil service employees may be made pursuant to chapters 76 and 77 of the Hawaii Revised Statutes.

SECTION 12. Any law to the contrary notwithstanding, the appropriated and unexpended funds in the biennium budget, for the fiscal years beginning July 1, 1971 and ending on June 30, 1973, for the office of the revisor of statutes shall be transferred from the judiciary to the office of the legislative reference bureau for the use of the office of the revisor of statutes.

SECTION 13. All records, equipment, machines, files, supplies, books, papers, documents, maps, and other personal property heretofore made, used, acquired or held by the office of the revisor of statutes shall be transferred from the judiciary to the office of the legislative reference bureau for the use of the office of the revisor of statutes, without cost, and without compliance with any disposal procedures or requirements, any law to the contrary notwithstanding.

SECTION 14. The judiciary shall provide suitable quarters for the office of the revisor of statutes, without the payment of rental or other charges, until the legislature provides permanent facilities for the revisor and his staff.

SECTION 15. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 16. This Act, upon its approval, shall take effect on July 1, 1972.

(Approved June 1, 1972.)

ACT 172

S. B. NO. 1983-72

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 248, Hawaii Revised Statutes, is amended to read:

"Sec. 248-6 Distribution of grants-in-aid of state general fund to the several counties. (a) Per cent of general revenues. The several counties shall receive from the state general fund an amount equal to .505 per cent of the tax base attained for the fiscal year ending in the previous calendar year, which tax base shall be for all collections of the general excise tax, use tax, and public service company tax which have been made at the rate of three and one-half per cent or more, excepting only taxes collected from public utilities as defined in section 269-1. The director of taxation shall determine the amount to be distributed to the several counties.

(b) Minimum amount. Four million dollars of the amount determined to be available to the counties as hereinabove set forth shall be distributed to the several counties in equal amounts.

(c) Fiscal needs and capacities. Each county shall receive a portion of the remaining amount by adding the amount determined to reflect its relative fiscal capacity and the amount determined to measure its relative fiscal need; provided, that seventy-five per cent of such portion shall be distributed only upon the approval of the governor of a plan or program submitted by the county, which plan or program the governor finds, in his discretion, raises, improves, or maintains a justifiable level of services performed by the county; the governor may as a condition to his approval of such plan or program require the county to provide additional county funds to implement such plan or program; provided, that the amount of such county funds shall not be more than twice the amount of the state funds allotted by the governor. Any amounts not allotted by the governor during the fiscal year shall lapse into the general fund. The amounts reflecting relative fiscal capacity and measuring relative fiscal need shall be determined as follows:

(1) The amount determined to reflect a county's relative fiscal capacity shall be arrived at by the use of the following formula:

(A) Determine the per capita net taxable real property by dividing the average of the net taxable real property for the preceding five calendar years for that county as certified by the director of taxation pursuant to section 248-2(e) by the average of the civ-

*Edited accordingly.

ilian population in that county for the preceding five calendar years.

- (B) Determine the per capita net taxable real property for the entire State by dividing the sum of the average of the net taxable real property for the preceding five calendar years for each of the several counties as certified by the director of taxation pursuant to section 248-2(e) by the average of the civilian population in the entire State for the preceding five calendar years.
- (C) Subtract that county's per capita net taxable real property as determined by paragraph (A) above from the per capita net taxable real property for the entire State as determined by paragraph (B) above and multiply this result by the average civilian population in that county for the preceding five calendar years.
- (D) Multiply the result obtained in paragraph (C) above by the average effective tax rate. The average effective tax rate is obtained by dividing the total annual real property tax realizations for all the counties for the preceding five calendar years by the total net taxable real property valuations in the entire State for the preceding five calendar years.
- (E) Multiply the result obtained in paragraph (D) above by a weight of two.
- (2) The amount determined to measure a county's relative fiscal need shall be arrived at by multiplying that county's civilian population percentage (that is the proportion that the average of civilian population for the preceding five years in that county bears to the average of civilian population in the entire State for the preceding five years) by the difference between the amount available for distribution to the several counties as determined by subsection (a) and the minimum amount distributed under subsection (b).

(d) Civilian population. For the purposes of this section, the civilian population in each county shall be determined by the state director of health as of July 1 of each year from the best information available, and this determination shall be conclusive.

(e) Monthly distribution. The director of finance of the State, in monthly installments, on or before the 15th day of each month shall pay the monthly share of the amounts as determined above to the county treasurer of each county, or in the case of the city and county of Honolulu to the director of finance, to become a general realization of the county, expendable as such, except as otherwise provided by law, and provided, that the director of finance of the State may make periodic distributions to the counties other than on a monthly basis."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved June 1, 1972.)

*Edited accordingly.

A Bill for an Act Relating to the Reporting of Information on Subleases of State Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 222 of the Hawaiian Homes Commission Act is amended to read as follows:

"Sec. 222. Administration. (a) The department shall adopt rules and regulations and policies in accordance with the provisions of chapter 91, Hawaii Revised Statutes. The department may make such expenditures as are necessary for the efficient execution of the functions vested in the department by this Act. All expenditures of the department, as herein provided out of the Hawaiian home-administration account, the Hawaiian home-development fund, or the Hawaiian home-operating fund, and all monies necessary for loans made by the department, in accordance with the provisions of this Act, from the Hawaiian home-loan fund, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission. The department shall make an annual report to the legislature of the State upon the first day of each regular session thereof and such special reports as the legislature may from time to time require. The chairman of the commission shall give bond in the sum of \$25,000 for the faithful performance of his duties. The sureties upon the bond and the conditions thereof shall be approved annually by the governor.

(b) When land originally leased by the department is, in turn, subleased by the department's lessee or sublessee, the department shall submit, within ten days of the convening of any regular session, a written report to the legislature which shall cover the sublease transactions occurring in the calendar year prior to the regular session and shall contain the names of the persons involved in the transaction, the size of the area under lease, the purpose of the lease, the land classification of the area under lease, the tax map key number, the lease rental, the reason for approval of the sublease by the department, and the estimated net economic result accruing to the department, lessee and sublessee.

SECTION 2. Section 171-29, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 171-29 Report to legislature on all dispositions. (a) The board of land and natural resources shall submit a written report annually to the legislature within ten days of the convening of each regular session, of all land dispositions made in the preceding year, including sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges, and setting aside of lands by executive orders, the persons to whom made, the size of each disposition, the purpose for which made, the land classification of each, the tax map key number, the per unit price paid or set, and whether the disposition was by auction, by drawing, or by negotiation. When land originally leased by the board is, in turn, subleased by the board's lessee or sublessee, the report shall include, in addition to the foregoing information, the reason for approval

of the sublease by the board and the estimated net economic result accruing to the State, lessee and sublessee.

(b) Whenever in this chapter any sale, lease, easement, license, executive order, quitclaim, exchange, or other disposition is made subject to disapproval of the legislature, a written report thereof containing the information required in subsection (a) of this section shall be submitted to the legislature in the session next following the date of the disposition within ten days of the convening of the session."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 2, 1972.)

ACT 174

H. B. NO. 356

A Bill for an Act Relating to Custody of, and Accounting for, Prisoners' Money.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-27, Hawaii Revised Statutes, is amended to read:

"353-27 Custody of moneys; accounts for prisoners, etc. All sums collected under chapters 353 and 354 and other authorized sources shall be deposited by the department of social services and housing in an individual trust account to the credit of the prisoner. The department shall maintain individual ledger accounts for each prisoner and shall issue to each prisoner a quarterly statement showing credits and debits."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect on July 1, 1972.

(Approved June 2, 1972.)

ACT 175

H. B. NO. 440

A Bill for an Act Relating to Exchanges of Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Value. The public land exchange shall be of equal value and of use comparable to that of the private land prior to the exchange. Provided, that

*Edited accordingly.

if the use of private land prior to the exchange is any one of the following, (1) intensive agricultural or (2) pasture or (3) special livestock, and the State has no land within the land district of comparable specific use, the board of land and natural resources may exchange public land classified in any other of the three uses set forth above. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided, no exchange shall be made should public land exceed 120 per cent of the value of the private land.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This act shall take effect upon its approval.

(Approved June 2, 1972.)

ACT 176

H. B. NO. 1638-72

A Bill for an Act Relating to General Public Improvements and the Financing Thereof, Making Appropriations for Public Improvements and Plans Related Thereto Out of General Revenues, Special Funds, General Obligation and Revenue Bond Funds and Grants; and Providing for the Issuance of Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This act shall be known and may be cited as the General Improvements Act of 1972.

SECTION 2. The following sums or so much thereof as shall be sufficient to finance the projects herein contained, are hereby appropriated or authorized, as the case may be, to be expended by the Department of Accounting and General Services, unless otherwise specified in the subsection, out of moneys in the treasury received from general revenues, special funds, general obligation bond funds, airport revenue bond funds, harbor revenue bond funds, Hawaii Housing Authority bond funds, and federal grants. General obligation bonds may be issued as provided by law to yield the amount that may be necessary to finance projects herein that do not have funding specifically designated, provided that the sum total of the general obligation bonds so issued shall not exceed \$65,669,000. The letter symbols used after the specific project appropriations, if any, indicate the source of financing and shall have the following meaning: (a) general obligation bond funds with debt service costs to be paid from special funds, (s) special funds, (r) revenue bond funds, (f) federal funds, and (x) county funds.

*Edited accordingly.

I. CITY AND COUNTY OF HONOLULU

A. DEPARTMENT OF AGRICULTURE

(To be expended by the Department of Agriculture)

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| 1. Marketing program—For promulgation of provisions for marketing program. | 20,000 |
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B. DEPARTMENT OF LAND AND NATURAL RESOURCES

(To be expended by the Department of Land and Natural Resources)

State Parks

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| 1. Kuilioloa Heiau Historic Site, Oahu—Research, plans and restoration of historic site Kuilioloa Heiau, Kaneilio Point. | 15,000 |
| 2. Waahila Ridge Park, Honolulu—Plans and construction to widen roadways, develop foot trails, develop scenic view sites and other improvements. | 100,000 |
| 3. Open Space in Leeward District, Oahu—Acquisition of a parcel of land identified by Tax Map Key 9-7-25-10, Waimano, Ewa, Oahu for preservation of open space. | 7,500 |
| 4. Kahala Heights Park, Oahu—Land acquisition, planning and construction of a park at Kahala Heights. Provided that matching federal funds are assured for land acquisition. | 350,000 |
| 5. Paiko Lagoon Wildlife Refuge, Oahu—Incremental acquisition, planning and development of a wildlife refuge. | 70,000 |
| 6. Pali Lookout Park, Oahu—Plans for a Pali lookout park. | 25,000 |

Fish and Game

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| 7. Wildlife Protection and Control, Statewide—Plans and construction of facilities for wildlife, including establishment of a system of protection and control of wildlife on the islands of Hawaii, Maui, Lanai, Molokai, and Kauai. | 25,000 |
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C. DEPARTMENT OF TRANSPORTATION

(To be expended by the Department of Transportation)

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| 1. Farrington Highway Improvements, Oahu—Planning and construction of traffic lights on Nanakuli Avenue and Farrington Highway. | 40,000 |
| 2. Farrington Highway, Surface Water Drainage, Oahu—Improvement of surface water drainage facilities on Farrington Highway between Kuhi Street and 67-381 Farrington Highway, Waialua. | 40,000 |
| 3. Farrington Highway Improvements, Oahu—Installation of highway safety devices including incandescent street lights along improved sections in the vicinity of Maili. | 40,000 |
| 4. Farrington Highway, Street Lights, Oahu—Improvement to street lights on Farrington Highway fronting Waialua High School. | 25,000 |
| 5. Interstate Highway (H-1) Improvements, Oahu—Installation of emergency telephone call box on H-1 near Palailai Interchange. | 4,000 |
| 6. Kahekili Highway, Oahu—Plans for expansion to four-lane highway. | 100,000 |
| 7. Kamehameha Highway Improvements, Oahu—Plans and construction for widening of Kamehameha Highway between Kawailoa Road and Kaha-luu, Oahu. | 100,000 |
| 8. Kamehameha Highway Traffic Signal Improvements, Oahu—Interconnection and synchronization of traffic signals on Kamehameha Highway between Halawa Gate and Pearl Harbor Spur. | 50,000 |
| 9. Kamehameha Highway Drainage Improvements, Oahu—Plans for drainage improvements between Waimano Home Road and Waiawa Stream. | 196,000 |
| 10. Kamehameha Highway, Oahu—Installation of overhead street lights between Waiahole Valley Road and Waikane Bridge. | 10,000 |
| 11. Kamehameha Highway Widening, Oahu—Addition of one out-bound lane from Hale Street to Aiea Interchange. | 70,000 |

12. Kuwale Road, Lualualei, Waianae, Oahu—Planning and construction of flood control drains and bridge at Kuwale Road.	180,000
13. Likelike Highway Improvements, Honolulu—Lengthen deceleration lane at Likelike Highway and Kula Kolea Drive.	20,000
14. Likelike Highway Improvements, Oahu—Plans and construction of pathway between Kamehameha Highway and Anoi Road.	10,000
15. Pali Highway Street Lights, Kailua, Oahu—Planning and construction of street lights from the Pali tunnels to and including the junction at Kalanianaʻole Highway and Kailua Road.	100,000
16. Pali Highway Improvements, Honolulu—Plans for construction of improvements along Pali Highway, from Waokanaka Street to Vineyard Boulevard, Oahu, to include but not limiting to installation of traffic lights and construction of additional highway lanes.	75,000
17. Weed Junction, Waialua, Oahu—Street lights at Weed Junction, Waialua.	50,000
18. Kahekili Highway, Oahu—Improvements to intersection at Kahekili Highway and Keaahala Road.	30,000
19. Kalanianaʻole Highway, Oahu—Vicinity of Aina Koa to Lunalilo Home Road or any portion thereof—Plans, land acquisition and construction for widening of highway at critical sections, provision for reverse traffic lane, installation and modification of traffic signals, and other highway and transportation facilities including bikeway. [Fund to be supplemented by Act 197, SLH, 1971, Item IC 7]	3,000,000
20. Kamehameha Highway, Oahu—Installation of street lights near Waimea Bay on Kamehameha Highway.	50,000
21. Entrance to Leeward College, Oahu—Plans, acquisition of rights-of-way and construction of roadway for ingress-egress to Leeward College. [Funds to be supplemented by Act 197, SLH, 1971, Item I-C-12]	50,000
22. Kamehameha Highway, Oahu—Plans and construction for improvements between Lilipuna Road and Haiku Road.	500,000

D. UNIVERSITY OF HAWAII

1. Agricultural Experiment Station, Waianae, Oahu—Planning for a University of Hawaii Agricultural Experiment Station.	5,000
2. Hamilton Library Phase II, Manoa Campus, Oahu—Construction and landscaping for an addition to the Hamilton Library, including equipment.	200,000
3. Windward Community College, Oahu—Land, plans and construction for development of Windward Community College. [Funds to be supplemented from Item I-D-4 of Act 97, SLH, 1971]	1,000

E. DEPARTMENT OF EDUCATION

1. Aiea High School, Oahu—Plans for a lecture/demonstration area, and plans and construction of an auto mechanic shop. [Funds to be supplemented from Item I-E-2 of Act 197, SLH 1971]	1,000
2. Aiea High School, Oahu—Plans and construction of auto mechanic shop.	100,000
3. Aiea Intermediate School, Oahu—Supplemental funds for extension of existing parking lot.	75,000
4. Aliamanu Elementary School, Oahu—Planning and construction for expansion of library and installation of carrels and audio-visual equipment.	25,000
5. Aliamanu Elementary School, Oahu—Plans and construction of playcourt for volleyball and basketball.	25,000
6. Aliamanu Intermediate School, Oahu—Plans and construction of roof over physical education quadrangle.	35,000
7. Aliamanu Internediate School, Oahu—Planning and construction for installation of wooden louvers on school windows.	20,000

8. Aliiolani Elementary School, Honolulu—Planning and construction or renovation of existing facilities for art, music, science, teacher work center, teacher dining room. Additional parking, and demolition of old building.	197,000
9. August Ahrens Elementary School, Oahu—Plans and construction of a recreation field.	63,000
10. Campbell High School, Oahu—Plans for a food service center.	60,000
11. Campbell High School, Oahu—Plans for a general classroom building.	130,000
12. Castle High School, Oahu—Installation of chain link fence around farm area.	15,000
13. Castle High School, Oahu—Renovation of science room and installation of science table.	126,000
14. Castle High School, Oahu—Photography room, renovate and install ventilation system.	10,000
15. Central Intermediate School, Oahu—Plans, construction, and renovations to implement the first increment of the reconstruction program. [Funds to be supplemented from Item F-108 of Act 187, SLH 1970 and Item I-C-20 of Act 197, SLH 1971]	151,000
16. Eleventh Representative District Schools, Oahu—Planning and construction of general improvements at Waiālae Elementary School, Liliuokalani Elementary School, Kaimuki Intermediate School, and Waikiki Elementary School.	120,000
17. Hauula School, Oahu—Planning and construction of library building and administration building.	430,000
18. Hahaione Elementary School, Oahu—Plans and construction of a multi-purpose building.	250,000
19. Highlands Intermediate School, Oahu—Planning and construction of a stonewall and fencing facility.	50,000
20. Hoāea Elementary School, Oahu—Supplemental funds for land acquisition, master planning and plans for the first increment.	190,000
21. Hōkulani Elementary School, Honolulu—Planning for construction or renovation of existing facilities for art, science, and teacher work center.	12,000
22. Honowai Elementary School, Oahu—Renovation of two classrooms.	30,000
23. Jefferson Elementary School, Honolulu—Plans and construction of a sixteen-classroom building. Demolish Buildings A, E, F, I, P.	1,000,000
24. Kaahumanu School, Honolulu—Plans and construction of sound proofed 12-classroom building, including furniture and equipment, and demolition of present building.	485,000
25. Kaala Elementary School, Oahu—Planning and construction of paved play court.	10,000
26. Kāhaluu Elementary School, Oahu—Planning and construction of a multi-purpose dining room.	240,000
27. Kahuku High School, Oahu—Plans and construction of administration building. [Unexpended balances of Item F-11, Act 187, SLH 1970, shall be used for this purpose]	1,000
28. Kahuku High School, Oahu—Replacement of bleachers and construction of drainage improvements.	123,000
29. Kailua High School, Oahu—Planning and construction of additional bleachers.	45,000
30. Kailua High School, Oahu—Installation of Mercury lights, athletic field.	161,000
31. Kailua High School, Oahu—Plans for expansion of existing library.	25,000
31A. Niu Valley Intermediate School, Oahu—Redesign and renovation of the Administration Building.	100,000
32. Kaimuki High School, Oahu—Improvements to existing facilities.	50,000
33. Kalāheo Hillside Intermediate School, Oahu—Plan, construct and connect a hook-up to sewers and construction of ground improvements.	42,000

34. Kalani High School, Oahu—Plans and construction of a 25-yard swimming pool. [Funds to be supplemented from Item I-E-53 of Act 197, SLH 1971]	1,000
35. Kamiloiki School, Hawaii Kai, Oahu—Construction of eight classrooms, thereby completing building "A".	350,000
36. Kapalama Elementary School, Oahu—Plans and construction of a teachers' dining room. [Funds to be supplemented from Item F-88 of Act 155, SLH 1969]	1,000
37. Kawananakoa Intermediate School, Oahu—Plans and construction of additional storage areas for Shop I and II and improvements to existing auditorium. [Funds to be supplemented from Item I-E-61 of Act 197, SLH 1971]	1,000
38. King Intermediate School, Armory/Gymnasium, Oahu—Construction of combination parking and recreational area.	35,000
39. King Intermediate School, Oahu—Plans and construction of second entrance and exit to connect with existing roads.	75,000
40. King Intermediate School, Oahu—Planning and construction of a resource center.	100,000
41. Koko Head Elementary School, Oahu—Completion of art, music, and science classrooms. [Funds to be supplemented from Item F-5 of Act 187, SLH 1970]	1,000
42. Lanakila Elementary School, Honolulu—Widening of entrance of access road to school at Kuakini Street and covered walkways from classroom building to administration building.	85,000
43. Lehua Elementary School, Oahu—Improvements of the parking lot and driveway.	15,000
44. Lehua Elementary School, Oahu—Planning and construction of a library.	50,000
45. Leilehua High School, Oahu—Paving of makai side of school along fence for a parking area.	25,000
46. Leilehua High School, Oahu—Improvement of lighting system on football field.	150,000
47. Liholiho Elementary School, Honolulu—Planning for science, art, and music buildings and other improvements.	30,000
48. Liholiho Elementary School, Honolulu—Planning and construction of cafetorium.	200,000
49. Linapuni Elementary School, Oahu—Renovation and improvements to administration and library facilities. [Funds to be supplemented from F-73 and F-171 of Act 155, SLH 1969]	12,000
50. Lunalilo School, Honolulu—Planning and construction of special elementary school art room.	80,000
51. Maemae Elementary School, Honolulu—Improvement to library (building "A") carpeting, air conditioning, and renovation involving the extension of walks to increase area. Also, conversion of 8' x 25' hallway space between pupil toilets and room 33 into storage room in building "J".	65,000
52. Makikilo Elementary School, Oahu—Installation of an antenna system for television.	2,000
53. Makalapa Elementary School, Oahu—Planning and construction for grounds improvement.	25,000
54. Manana Elementary School, Oahu—Construction of a two thousand foot fence between the playground and the school grounds.	10,000
55. Manana Elementary School, Oahu—Planning and construction of a cafetorium.	208,000
56. Manoa Elementary School, Honolulu—Planning, construction, and equipping of classrooms for art, music, and science.	190,000
57. Manoa Elementary School, Honolulu—Plans and construction of a covered walkway and hard stand area for JPO activity.	25,000
58. McKinley High School, Honolulu—Plans and construction of first increment of replacement program. [Funds to be supplemented by Items F-29 of Act 40, SLH 1968; F-98 and F-105 of Act 155, SLH 1969]	1,000

59. McKinley High School, Honolulu—Plans and construction of a new olympic size swimming pool. [Balance of Act 197, SLH 1971, Item E-81 to supplement this appropriation]	150,000
60. McKinley High School, Honolulu—Plans and improvements to the athletic field complex.	150,000
61. McKinley High School, Honolulu—Plans and construction for classroom, Special Education.	110,000
62. Moanalua Intermediate School, Honolulu—Plans and construction of tennis practice wall.	1,000
63. Moanalua Intermediate School, Honolulu—Planning and construction for extension of basketball and volleyball courts. [To be matched by the City and County of Honolulu]	10,000
64. Moanalua Elementary School, Honolulu—Planning and construction for improvements to and expansion of library.	100,000
65. Noelani Elementary School, Oahu—Improvements to existing facilities for art, music and science classrooms. [Funds to be supplemented from Item I-E-87 of Act 197, SLH 1971]	1,000
66. Noelani Elementary School, Honolulu—Construction of thirty-foot covered walkway between the new administration and the other existing covered walkways.	5,000
67. Palisades Elementary School, Oahu—Construction of a fence and retaining wall.	50,000
68. Palolo Elementary School, Honolulu—Improvements to campus and grounds.	90,000
69. Pauoa Elementary School, Honolulu—Improvement to existing facilities for additional storage space.	75,000
70. Pearl City Elementary School, Oahu—Soundproofing of school buildings “H”, “I”, “J”, and “K”.	75,000
71. Pearl City Highlands Elementary School, Oahu—Renovation and improvements to library and administration building.	45,000
72. Pope Elementary School, Oahu—Construction of 10 additional classrooms, administration, and library buildings.	692,000
73. Puohala School, Oahu—Land acquisition, plans and construction of second entrance and additional parking lot.	50,000
74. Puuhale School, Honolulu—Plans and construction of second increment of physical facilities.	200,000
75. Puuloa (Ewa Beach III) Elementary School, Oahu—Plans and site improvement for the construction of the first increment.	142,000
76. Radford High School, Oahu—Plans for the construction of a fine arts building.	100,000
77. Red Hill Elementary School, Oahu—Plans and construction of interior fence along drainage swale.	4,000
78. Red Hill Elementary School, Oahu—Plans and construction of covered walkways from classroom buildings to cafeteria.	10,000
79. Roosevelt High School, Oahu—Plans and construction of first increment of replacement program. [Funds to be supplemented from Items F-57, F-102, and F-125 of Act 155, SLH 1969; and Items F-16, F-19 and F-38 of Act 187, SLH 1970]	1,000
80. Royal Elementary School, Oahu—Improvement to existing facilities for administration and library uses. [Funds to be supplemented from Item F-115 of Act 187, SLH 1970]	1,000
81. Royal School, Honolulu—Improvement of grounds and existing facilities.	10,000
82. Salt Lake Elementary School, Oahu—Plans and construction of play-court for basketball and volleyball.	25,000
83. Salt Lake Elementary School, Oahu—Plans and construction of covered walkways over mall area.	15,000
84. Stevenson Intermediate and Lincoln Elementary Schools, Honolulu—Installation of flood lights on the grounds of Stevenson Intermediate School and Lincoln Elementary School.	25,000

85. Stevenson Intermediate School, Honolulu—Improvement and renovation of present facilities.	250,000
86. Stevenson Intermediate and Lincoln Elementary Schools, Honolulu—Supplemental appropriation for the construction of an instructional materials center to be located between Stevenson Intermediate and Lincoln Elementary Schools.	250,000
87. Stevenson Intermediate School, Honolulu—Improvement and renovation to the cafetorium.	150,000
88. Sunset Beach Elementary School, Oahu—Plans for new school. Plans and construction of site improvements. [Funds to be supplemented from Item F-44 of Act 155, SLH 1969]	1,000
89. Wahiawa Elementary School, Oahu—Construction of a chain link fence along the gulch, 6 feet high, 700 feet long and for the remodeling of cafetorium stage into a full length stage.	15,000
90. Waialua High School, Oahu—Planning and construction of enclosed classroom in the present wood shop, soundproofing and purchase of equipment.	35,000
91. Waialua High School, Oahu—Widening of present streets and paving of parking lot.	75,000
92. Waialua High School, Oahu—Plans and construction of a paint spray booth and installation of lights outside of automotive shop area.	10,000
93. Waimanalo Elementary and Intermediate School, Oahu—Construction of a music and band building.	226,000
94. Waianae High School, Oahu—Plans and construction of athletic facilities and library. [Funds to be supplemented from Item F-129 of Act 187, SLH 1970, and Items I-E-118 and I-E-125 of Act 197, SLH 1971]	1,000
95. Waipahu Elementary School, Oahu—Planning and construction of the administration and library buildings.	100,000
96. Washington Intermediate School, Oahu—Miscellaneous improvements and renovation. Such as stage curtains, removal of partitions in classrooms, etc.	50,000
97. Kaneohe Regional Library, Oahu—Planning and installation of temperature and humidity controls and acoustical controls.	75,000
98. Wahiawa Branch Library, Oahu—Plans and construction of covered, open air patio at Wahiawa Library and purchase of equipment.	25,000
99. Waipahu High School—Supplement Act 197, SLH 1971, Item E-128, to include broadcast booth and ticket booth and other related facilities.	1,000
100. Castle High School, Oahu—Renovate Science Rooms and Install Science Tables.	126,000
101. Dole Intermediate School, Oahu—Improvements and expansion of library	150,000
102. Hauula Elementary, Oahu—Construction of administration and library building	430,000
103. Heeia Elementary, Oahu—Plans and construction for general improvements.	100,000
104. Hickam 2nd Elementary School, Oahu—Master plan and plans for first increment.	50,000
105. Kalakaua Intermediate School, Oahu—Construction of third increment and planning for fourth increment.	400,000
106. Kahuku High and Elementary, Oahu—Plans for classrooms.	31,000
107. Kaimuki Intermediate School, Oahu—Supplemental funds for a fine arts facility. Unexpanded balance from Item I-E-49, Act 197, SLH 1971 shall be used for this purpose.	1,000
108. Kamiloiki Elementary School—Plans for the construction of an overpass over Hawaii Kai Drive.	10,000
109. Kaiser High School, Oahu—Planning and construction of bleachers and field light for the athletic field, tennis courts, and baseball field. Campus lighting.	350,000

110. Kauluwela Elementary School, Oahu—Construction of an administration building and parking area.	90,000
111. Koko Head Elementary School, Oahu—Plans and construction of additional parking areas.	20,000
112. Koko Head Elementary School, Oahu—Planning and construction of a new library. Renovation of the existing library for use as classrooms.	300,000
113. Koko Head Elementary School, Oahu—Equipment for the special classrooms building.	25,000
114. Manana Elementary School, Oahu—Planning and construction of a multi-purpose dining room with multiuse floor covering for P.E. programs.	275,000
115. Manoa Intermediate School, Oahu—Supplemental funds for the first increment.	50,000
116. Mililani-Kai Elementary School (Waipio II), Oahu—Master plan and plans for first increment.	50,000
117. Mililani High and Intermediate School, Wahiawa, Oahu—Planning and construction of a fine arts building.	450,000
118. Moanalua High School—Planning and construction of classrooms, planning and athletic field, lights, bleachers and playcourts or —To plan and construct an athletic field, paved playcourts, lights, and bleachers.	150,000
119. Nanakuli High and Intermediate School, Oahu—Planning and construction of an industrial arts building.	50,000
120. Niu Valley Intermediate School, Oahu—Planning and construction of renovations of the cafetorium to accommodate student and community activity programs.	300,000
121. Pearl City High School—Improvements to the athletic field.	50,000
122. Roosevelt High School—Renovation of physical education and athletic locker rooms and shower facilities.	10,000
123. Roosevelt High School—Supplemental fund to Act 197, SLH 1971, Item E-103—Extension of student parking area on Mott-Smith Drive.	50,000
124. Roosevelt High School—Supplemental fund to Act 197, SLH 1971, Item E-98—Enclosing of senior patio.	10,000
125. Roosevelt High School—Ticket Booth and athletic field.	40,000
126. Roosevelt High School—Garage for school bus and truck.	10,000
127. Waiau Elementary School, Oahu—Planning of sixteen classrooms.	50,000
128. Waimalu Uka Elementary School, Oahu—Plans for the first increment.	50,000
129. Waipahu Intermediate School, Oahu—Land Acquisition, planning and construction of classrooms and other improvements. Funds appropriated in Item F 60, Act 155, SLH 1969 which are unencumbered as of June 30, 1972 may be used for this project.	500,000
130. Wilson Elementary School, Oahu—Plans and construction for the air conditioning of the Library Building. Appropriation made in Item F-119, Act 187, SLH 1970 shall be used for this purpose.	1,000

F. DEPARTMENT OF HAWAIIAN HOME LANDS

(To be expended by the Department of Hawaiian Home Lands)

1. Nanakuli Service Center, Oahu—Paving of dirt area to provide for parking at service center.	6,000
2. Papakolea, Oahu—To provide home replacement loans at Papakolea, Oahu.	200,000

G. DEPARTMENT OF HEALTH

Public Health and Others

1. Neighborhood Youth Center, Honolulu—Plans and acquisition of land and construction of a neighborhood youth center in Kalihi-Palama. [To be supplemented by prior appropriations]	435,000
2. Palama Settlement, Honolulu—Feasibility study for joint venture between the State of Hawaii and Palama Settlement for the construction of new physical facilities.	10,000

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| 3. Waianae, Oahu—Plans and construction for a center for mentally retarded children. | 100,000 |
| 4. Waimano Training School, Oahu—Planning and construction of a chain link fence. | 50,000 |

Hospital Grants-in-Aid

(To be expended by the Department of Health)

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| 5. St. Francis Hospital, Oahu—Planning and construction of a four-story building to include a 50 bed extended care facility, surgical suite, emergency care unit and other necessary facilities to support a general hospital. | 750,000 |
| 6. Kapiolani Hospital, Oahu—Planning and construction of a new maternity wing to replace the existing facility. | 500,000 |
| 7. Kahuku Hospital, Oahu—Plans and construction for expansion at Kahuku Hospital, Kahuku, Oahu. [Balance in Item 0-3 of Act 155, SLH, 1969 and Item H-15 of Act 187, SLH, 1970, may be utilized for this appropriation] | 500,000 |
| 8. Kuakini Hospital and Home, Oahu—Planning, construction and modernizing of two existing nursing floors into a 25-bed special care floor, an improved 16-bed general nursing floor, and a 17-bed extended care floor. | 500,000 |
| 9. Queen's Hospital, Oahu—Planning and construction of mental health facility. [To supplement prior appropriations] | 500,000 |
| 10. Wahiawa General Hospital, Oahu—Planning and construction of new hospital facilities. [To supplement prior appropriations] | 750,000 |
| 11. Castle Memorial Hospital, Oahu—Planning and construction for the expansion of Castle Memorial Hospital. | 500,000 |

H. DEPARTMENT OF SOCIAL SERVICES AND HOUSING

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| 1. Crane Park Senior Citizen Center, Honolulu—Plans and construction of Senior Citizen Center. | 400,000 |
| 2. Hawaii State Senior Center, Honolulu—Purchase of equipment. | 5,000 |

Hawaii Housing Authority

(To be expended by the Department of Social Services and Housing)

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| 3. Koolau Village, Oahu—Plans and construction of recreational center. | 80,000 |
| 4. Kalihi Valley Homes, Oahu—Plans and construction of community facilities. | 100,000 |
| 5. Hauiki Project, Oahu—Plans and construction for improvements. | 100,000 |
| 6. Community Facilities at Mayor Wright Housing Oahu—Plans and construction for upgrading and improvement of community facilities as defined in section 356-3 of the HRS, including two buses or vans, and for the development and implementation of a recreational program for children. [To be expanded by the Department of Social Services] | 100,000 |
| 7. Kuhio Park Terrace Project, Honolulu—Plans and construction of a multi-purpose family education building. | 100,000 |
| 8. Public Housing, Palolo—Public Housing improvements. | 25,000 |

I. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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| 1. Senior Citizens Center, Waipahu—Plans and construction of a senior citizen center. | 100,000 |
| 2. Moiliili/McCully Senior Citizen Center, Oahu—Plans and construction of Senior Citizen Center. | 400,000 |
| 3. Lolena Place Extension Improvements, Oahu—Plans and construction of retaining wall along Lolena Place extension at Puukamalii cemetery Alewa Heights and fencing. | 75,000 |
| 4. Kapalama Incinerator, Honolulu—Plans and acquisition of Kapalama incinerator land. | 10,000 |

K. AID TO COUNTIES

(To be expended by the City and County of Honolulu)

Flood Control

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| 1. Beach Walk, Kalia Road, Lewers Street Drain, Waikiki—Construction of approximately 1,000 feet of pipe drain along Kalia Road and Lewers Street from an existing box drain at the Saratoga Road-Kalia Road intersection and approximately 800 feet of pipe drain along Beach walk from Kalia Road-Beach Walk intersection. | 244,000 |
| 2. Ena Road Relief Drain, Waikiki—Construction of 350 feet of box drain system along Ena Road from an existing box drain at the Ena Road-Ala Moana Boulevard intersection. | 100,000 |
| 3. Kalakaua Avenue Drain, Waikiki—Construction of 750 feet of pipe drain system along Kalakaua Avenue from an existing pipe drain to the Kaiulani Avenue-Kalakaua Avenue intersection. | 90,000 |
| 4. Kuhio Avenue Drain, Waikiki—Construction of 700 feet of pipe drain system along Kuhio Avenue from Seaside Avenue to Nahua Street. | 75,000 |
| 5. Lewers Street Drain, Waikiki—Construction of 1,400 feet of pipe drain system from the Ala Wai Canal to Lewers Street-Kalakaua Avenue intersection. | 190,000 |
| 6. Ewa-Honouliuli, Oahu—Feasibility study for the improvement of existing drainage facilities in the Ewa-Honouliuli area. | 10,000 |

Parks and Recreation

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| 7. Alewa Heights Park—Plan, construction and equipment for park improvement including flood lighting [Funds to be supplemented from Item N-14, Act 187, SLH 1970, may be utilized for this appropriation] | 5,000 |
| 8. Beretania Park, Honolulu—Plans and construction of youth facilities, including purchase of equipment. | 30,000 |
| 9. Booth Playground, Honolulu—Construction of gym and youth center, including all necessary equipment, to supplement Act 187, SLH 1970, Item N-5 and N-6, and Act 197, SLH 1971, Item I-K-10. County matching for this project is not required; any provisions to the contrary in prior appropriation notwithstanding. | 370,000 |
| 10. Crane Field, Honolulu—Plans and construction of a mini gymnasium. | 200,000 |
| 11. Crestview Neighborhood Park, Oahu—Planning and construction of a Neighborhood Park. | 40,000 |
| 12. DeCorte Park Improvements, Honolulu—Raise height of backstop fencing around baseball field. | 10,000 |
| 13. Eleventh Representative District Parks, Honolulu—General improvements for 11th Representative District parks. | 50,000 |
| 14. Ewa Beach Community Park, Oahu—Installation of lighting facilities. | 40,000 |
| 15. Halawa District Park, Oahu—Supplemental appropriation for construction of gymnasium. [To be matched by the City and County of Honolulu] | 50,000 |
| 16. Honowai Playground, Oahu—Installation of lighting facilities. | 40,000 |
| 17. Kailua Field, Kailua, Oahu—Planning, construction and equipping of a recreation center building and a swimming pool complex at Kailua Field. [To be matched by county funds] | 200,000 |
| 18. Kalakaua Recreation Center, Honolulu—Plans, engineering and construction for major facility renovation including new swimming pool, new tennis courts, sprinkler systems, lighting of tennis and playcourts, and new park master plan utilizing abandoned roadway, and renovation of existing gym recreation center, including resurfacing of present courts. | 100,000 |
| 19. Kaneohe District Park, Oahu—Supplemental appropriation for development of park. Includes heater for swimming pool, [To be matched by County funds] | 175,000 |
| 20. Kanewai Park, Honolulu—Supplemental funds to improve facilities and to provide a community pool. | 50,000 |

21. Kauluwela Park, Honolulu—Plans and construction for lighting of Kauluwela Park.	20,000
22. Keehi Lagoon Park, Honolulu—Planning and construction of Little League stadium at Keehi Lagoon Park.	40,000
23. Keapuka Community Recreation Park, Oahu—Development, including clearing, grading, utilities, landscaping and comfort station.	100,000
24. Lanakila Park, Honolulu—Landscaping, site improvement, expansion of existing pavilion building and replacement of field lighting system. [Funds to be supplemented from Item N-14, Act 187, SLH 1970, and Item I-K-22, Act 197, SLH 1971, may be used for this appropriation]	20,000
25. Makiki District Park, Honolulu—Supplemental appropriation for the acquisition of private lands for the incremental development of district park in Makiki on lands bounded by Keeaumoku Street, Wilder Avenue, Makiki Street, and Lunalilo Freeway.	275,000
26. Manoa Field, Honolulu—Installation of flood lights for baseball field.	100,000
27. Manoa Field, Honolulu—Field site drainage improvements and construction of picnic facilities.	30,000
28. McCully Recreation Center, Honolulu—Grant-in-aid for the construction of McCully Recreation Center, including Youth Center and Senior Citizen Center. Supplements appropriation from Act 40, SLH 1968, Item M-8, Act 187, SLH 1970, Item N-21 and Act 197, SLH 1971, Item K-37. Requirement for financial participation by the City and County of Honolulu is not required, any provision to the contrary in previous appropriations notwithstanding. Assumes lapsing of Act 217, SLH 1967, Item 0-7 appropriation of \$100,000.	250,000
29. McCully Street and Kapiolani Boulevard Mini Park, Honolulu—Acquisition of 5,084 square feet of land for park purposes (land adjacent to State-owned parcel at corner of McCully Street and Kapiolani Boulevard).	20,000
30. Moiliili Mini Park, Honolulu—Acquisition of land adjacent to Kuhio Elementary School and development into a mini park. [To be matched by the City and County of Honolulu]	60,000
31. Moanalua Gardens Community Gymnasium, Honolulu—Planning and construction of a community gymnasium on State land adjacent to Moanalua Intermediate School [To be matched by the City and County of Honolulu]	50,000
32. Moanalua Gardens Park, Honolulu—Planning and construction of a community swimming pool in Moanalua Gardens Playground adjacent to Moanalua Intermediate School. [To be matched by the City and County of Honolulu]	50,000
33. Moanalua Valley Park, Oahu—Land acquisition in Moanalua Valley for a neighborhood park [To be matched by the City and County of Honolulu]	80,000
34. Palolo Playground, Honolulu—Supplemental funds for the completion of neighborhood youth facilities.	250,000
35. Petrie Park, Honolulu—Planning, constructing and equipping of eight-lane swimming pool for Petrie Park.	200,000
36. Puunui Park, Honolulu—Plans, construction, and equipment for park improvement including flood lighting. [Funds to be supplemented from Item N-13, Act 187, SLH 1970 and Item I-K-41, Act 197, SLH 1971 may be utilized for this appropriation]	60,000
37. Seventeenth Representative District Mini Parks, Honolulu—Land acquisition, plans, construction, and equipment for improvement and development of mini parks, including lighting, in the 17th Representative District. [Funds in Item N-16 of Act 187, SLH 1970 and Item I-K-38 of Act 197, SLH 1971, shall be used for this appropriation]	10,000
38. Seventeenth Representative District Recreational Project, Honolulu—Plans for recreational needs.	30,000

39. Sunset Beach Park, Oahu—Plans and construction of park. [The sum appropriated shall be expended by the City and County of Honolulu]	25,000
40. Waianae District Parks, Oahu—Plans and construction for installation of night lighting facilities at Pililaa Park, Maili Community Park and Nanakuli Park.	100,000
41. Waialua Recreational Center, Oahu—Plans and construction of additional tennis courts at Waialua Recreational Center. [To be matched by the City and County of Honolulu]	25,000
42. Haiku Village Park, Oahu—Grant-in-aid to Haiku Village Community association for playground improvements.	50,000
43. Makakilo, Oahu—For the planning and construction of a neighborhood park in Makakilo.	40,000
44. Kaonohi Neighborhood Park, Oahu—Improvements.	14,000
45. Halawa Park, Oahu—Planning and construction of a portable swimming pool.	50,000
46. Honowai Playground, Oahu—Planning and construction of a portable swimming pool.	50,000
47. Manana Playground, Oahu—Planning and construction of a portable swimming pool.	50,000
48. Pearl Ridge Park, Oahu—Plans and construction of a recreational complex.	200,000
49. Makakilo Playground, Oahu—For the acquisition, planning and development of adjoining property.	15,000
50. Kualoa Beach Park—Acquisition of approximately 175 acres of land for the second increment of the park which shall include Moli Fish Pond, provided that following its acquisition by the City and County, the title, control and jurisdiction over said fish pond shall be conveyed and transferred by the City and County to the State of Hawaii. [Funds to be supplemented from Item I-K-20 of Act 197, SLH 1971]	1,000
51. Koko Head District Park—Planning and construction of district park facilities by increments.	200,000
52. Niu Valley Playground—Construction of a playground adjacent to Niu Valley Intermediate School for comfort station, picnic facilities, play courts, play equipment for tots, landscaping and walkways.	108,000
53. Kuliouou Community Park—For clearing, grading, utilities, comfort station and landscaping.	25,000
54. Park development, Lanakila, Oahu—Plans and development of a park, parking area, and other appurtenances of that parcel of land identified as Tax Key 1-6-09-1 which is enclosed by Lanakila Street, Keola Street and the Lanakila Health Center.	150,000
55. Palolo Recreational Pool, Oahu—Installation of a heating system and the purchasing of safety equipment for the handicapped.	60,000
56. Kuhio Park Terrace Park Improvements, Honolulu—Acquisition of approximately two acres of land and plans and construction for expansion of the present park. Funds appropriated under Item I-K-21 of Act 197, SLH 1971, may be used for a new building for the Teen Center.	365,000
Street Lighting	
57. Hiram Lane Entrance Lighting, Honolulu—Plans and construction for lighting entrance near bus stop.	5,000
58. King Street Lighting, Honolulu—Plans and construction for lighting on King Street between Liliha Street and Owen Street. (Balances in Item N-36 of Act 187, SLH 1970, and Item K-49 of Act 197, SLH 1971, may be utilized for this appropriation)	35,000
59. Malanai Place Lighting, Honolulu—Plans and construction for lighting.	15,000
60. Waialua Beach Road Street Lighting, Oahu—Installation of street lights from Weed Junction to Haleiwa Beach Road on Waialua Beach Road. (To be matched by the City and County of Honolulu)	25,000

Roads

61. Ahilama Road, Oahu—Grant-in-Aid for paving.	50,000
62. Houghtailing Street Relief Drain, Oahu—Construction of relief drain along Houghtailing Street from Hala Drive to Alani Street to Kapalama Canal.	50,000
63. Kapiolani Boulevard Sidewalk, Honolulu—Plans and construction of a sidewalk along Kapiolani Boulevard between Date Street and the Manoa Drainage Canal. (To be matched by the City and County of Honolulu)	50,000
64. Nuhelewai, Kapalama Drainage and Flood Control Improvements, Oahu—Planning and construction of storm drainage improvements in the Nuhelewai, Kapalama areas between Naio Street and Aupuni Street.	650,000
65. Footbridge Across Nuuanu Stream at Bate Street, Oahu—Plans and construction of a footbridge.	50,000
66. Pacific Heights Road, Honolulu—Resurface and pave existing road.	30,000
67. Pacific Heights Road Drain, Honolulu—Construction of 1,500 feet of pipe drain system from the existing pipe drain on Pacific Heights Road 320 feet mauka of Kaola Way to the existing drainage ditch mauka of the Board of Water Supply pumping station. [To be matched by the City and County of Honolulu]	250,000
68. Salt Lake Boulevard, Oahu—Supplemental appropriation for improvement from realigned Halawa Heights Road to Puuloa Road. [To be matched by the City and County of Honolulu]	200,000
69. School Street Pedestrian Overpass, Honolulu—Plans and construction of a pedestrian overpass across School Street between Kam Shopping Center and Kapalama School.	300,000
70. Kunia Road and California Avenue—Planning and construction of a second entrance connecting Kunia Road and California Avenue in Wahiawa.	150,000
71. Waipahu Street—Planning and construction of a footpath along Waipahu Street from Kahuanui Street to August Ahrens School (mauka side of road.)	10,000
72. Waimao Slide Area Restoration, Palolo—Regarding of the slide area, installation of drainage facilities, etc., and landscaping including restoration of public facilities, roadways.	225,000
Others	
73. Palisades Community Transportation Facility, Oahu—Purchase of minibus.	20,000
74. Bikeways, Oahu—Design and construction of bikeways in the City and County of Honolulu.	170,000
75. Waialua-Haleiwa STP, Unit 1, Waialua—The first unit of a master planned STP for Waialua-Haleiwa drainage area.	375,000
76. Honouliuli STP, Unit I—Construction of a master planned STP providing secondary treatment for the area from Halawa to Barbers Point Industrial Park.	9,360,000
77. Honouliuli Interceptor Sewer, Honouliuli and Ewa—Construction of an interceptor sewer for the conveyance of wastewaters from Halawa-Waipahu tributary areas to Honouliuli WWTP for treatment.	663,500
78. Innovative planning, Oahu—Plans for the development of a program to assist in the preservation of communities where existence is being adversely affected by public or private action, such as those being displaced from the Ota Camp site. [To be matched by the City and County of Honolulu]	25,000 25,000x
79. Foster Botanical Garden, Oahu—Improvements to Foster Botanical Garden.	125,000

L. DEPARTMENT OF DEFENSE

1. Waianae, Oahu—Renovation and improvements of Civil Air Patrol facilities at Puuhulu Hill.	10,000
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II. COUNTY OF MAUI

B. DEPARTMENT OF LAND AND NATURAL RESOURCES

(To be expended by the Department of Land and Natural Resources)

State Parks

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| 1. Twin Falls Wayside Park, Maui—Acquisition of lands, plans, development and construction of Twin Falls Wayside Park, Maui. | 50,000 |
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C. DEPARTMENT OF TRANSPORTATION

(To be expended by the Department of Transportation)

Harbors—Small Boat

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| 1. Small Boat Launching Ramp, Honouliwai Bay, Molokai—Plans and construction of a small boat launching ramp at Honouliwai Bay, East Molokai. | 39,000 |
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Harbors—Commercial

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| 2. Kahului Harbor, Kahului, Maui—Plans and construction of a new fishing vessel facility and improvements of Kahului Harbor. | 65,000 |
| 3. Kahului Harbor, Pier II, Maui—Plans and construction of extension of freight shed. [To supplement prior appropriations] | 100,000 |

Highways

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| 4. Main and High Street Resurfacing, Wailuku, Maui—Resurfacing of Main and High Street, Wailuku, Maui. | 50,000 |
| 5. Bicycle Pathway, Lahaina, Maui—Plans, acquisition of right-of-way and construction of a bicycle pathway from Lahaina Civic and Recreation Center to Lahainaluna Road along Honoapiilani Highway. | 75,000 |
| 6. Haleakala Highway, Airport Junction to Kula Highway, Maui—Widening, realigning and reconstruction of approximately 7.7 miles of Haleakala Highway to its junction with Kula Highway at Pukalani. | 495,000 |
| 7. Maui High School, Kahului, Maui—Construction of an access road to Maui High School. | 75,000 |

D. UNIVERSITY OF HAWAII

(To be expended by the Department of Accounting and General Services)

Community College

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| 1. Maui Community College, Kahului, Maui—Plans, design and initial phase of construction of a Learning Center complex including classrooms, faculty offices, independent study areas, auxiliary space for instructional materials, and facilities for an off-campus instructional capability. [Appropriation made in Item 22, Act 167, SLH 1970, shall be used for this purpose] | 1,000 |
| 2. Maui Community College, Kahului, Maui—Plans and construction of improvements, renovations, and modification to existing facilities for vocational, business and art programs including furniture and equipment. [Appropriations made in Item C-136, Part III, Act 68, SLH 1971, shall be used for this purpose] | 1,000 |

E. DEPARTMENT OF EDUCATION

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| 1. Lanai High and Elementary School, Lanai—Planning and construction of a playground area, with lights, including multi-purpose paved courts for volleyball and basketball. | 150,000 |
| 2. Lanai High and Elementary School, Lanai—Planning and construction of a four-classroom building. | 250,000 |
| 3. New Lahaina Community-School Library Building, Maui—Plans for Lahaina Community-School Library to be located in the Lahaina Educational Cluster. [Funds to be supplemented from Item F-198 of Act 155, SLH 1969] | 1,000 |

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| 4. Molokai Intermediate and High School, Molokai—Plans and construction of eight special classrooms, renovation of existing Home Economics Classroom, drainage improvements and library and to supplement prior appropriation for gymnasium. [Funds to be supplemented by F-189, Act 155, SLH 1969 and F-140, Act 187, SLH 1970] | 1,000 |
| 5. Lahainaluna High School Gymnasium, Lahaina, Maui—Plans and construction of a gymnasium at Lahainaluna High School. | 800,000 |
| 6. New Hana High and Elementary School, Hana, Maui—Plans and construction of classrooms at the New Hana High and Elementary School. | 400,000 |
| 7. Pukalani Elementary School, Maui—Planning and construction of Pukalani Elementary School. | 113,000 |
| 8. Kahului Elementary School, Kahului, Maui—Planning and construction of lights for the parking lot of Kahului Elementary School. | 15,000 |

F. DEPARTMENT OF HAWAIIAN HOME LANDS

(To be expended by the Department of Hawaiian Home Lands)

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| 1. Molokai Recreational-Community Center Complex, Hoolehua, Molokai—Construction of a recreational playground community center, including equipment. [To supplement prior appropriation] | 300,000 |
| 2. Paukukalo Pavilion, Maui—Plans and construction for the expansion of Paukukalo Pavilion. | 25,000 |
| 3. Kalama-ula Subdivision, Molokai—Plans and construction of residential lots including roads, installation of utilities, and survey and stake out of the lots. [Funds to be supplemented from Item G-5 of Act 155, SLH 1969] | 1,000 |

G. DEPARTMENT OF HEALTH

Public Health and Others

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|---|---------|
| 1. Vector Control Building, Maui—Plans and construction of a vector control building, including equipment and land. | 130,000 |
| 2. Nurses Quarters, Molokai General Hospital, Molokai—Construction of Nurses quarters at Molokai General Hospital, Molokai. | 30,000 |

Grant-in-Aid

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|---|---------|
| 3. Hale Makua Intermediate Care Unit, Wailuku, Maui—Plans and construction of the Hale Makua Intermediate Care Unit facilities at Maui Memorial Hospital Complex. [This appropriation supplements prior appropriations] | 100,000 |
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I. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(To be expended by the Department of Accounting and General Services)

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|---|--------|
| 1. Kaunoa School Buildings, Sprecklesville, Maui—Alterations and repair of the former Kaunoa School Building. | 10,000 |
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K. AID TO COUNTIES

(To be expended by the County of Maui)

Water

(To be expended by the Board of Water Supply, County of Maui)

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| 1. Lower Kula Transmission and Feeder Line—Phase VIII—Plans and construction of water improvements which consist of approximately 9,650 feet of 8-inch pipe, 6,650 feet of 6-inch pipe and 12,350 feet of 4-inch pipe. Also included in the overall plan of this phase is a 2.0 Million Gallon Reservoir. | 200,000 |
| 2. Maui County Water Source Development—Engineering and economic studies, geologic investigation, exploration and development of sources for the County of Maui. | 300,000 |
| 3. Makawao Water Project—Plans and construction of approximately 1,000 feet of 16-inch transmission line, 1.0 M.G. tank and pumps for Makawao Water System. | 310,000 |

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| 4. Haiku Water System—Plans and construction for the incremental development to the Haiku Water System, including transmission lines, reservoirs, and pumping facilities. | 370,000 |
| 5. Ulupalakua-Kanaio Water Project—Initial phase includes plans and construction of 12,500 feet of 4-inch line. | 100,000 |

Parks

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| 6. Lahaina Civic and Recreation Center, Lahaina, Maui—Plans and construction of recreational facilities, a swimming pool, tennis courts, locker room-bathroom facilities and athletic fields. | 325,000 |
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Sewers

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| 7. Lanai Sewerage System—To supplement appropriations for a sewer system with an oxidation pond. | 500,000 |
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Roads

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| 8. Route 400, County of Maui—Paving of Route 400 from Ulumalu Road Junction to Kakipi Junction in the County of Maui. | 30,000 |
| 9. Omaopio Road Improvements, County of Maui—Improvements and resurfacing of Omaopio Road. | 60,000 |

Others

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|--|---------|
| 10. Paia Off-Street Parking, Maui—Plans and construction of an off-street parking at Lower Paia. | 110,000 |
| 11. Hoolehua Fire Station, Hoolehua, Molokai—Plans and construction of a fire station at Hoolehua. | 50,000 |
| 12. Molokai Community Center Building, Kilohana, Molokai—Plans and construction of a community center building, including equipment at Kilohana. | 50,000 |

III. COUNTY OF HAWAII

A. DEPARTMENT OF AGRICULTURE

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| 1. Field Pilot Programs for the Aqua Culture Program in Laupahoehoe, Waipio, Kohala—Planning and construction of ponds for such aqua culture farms. | 20,000 |
| 2. Waimea Vacuum Cooling Plant, Waimea, Hawaii—To supplement prior appropriation for purposes of completing construction; equipment of plant facilities, including storage refrigeration. | 25,000 |

B. DEPARTMENT OF LAND AND NATURAL RESOURCES

(To be expended by the Department of Land and Natural Resources)

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| 1. Kalopa Park-Mauna Kea Fencing, Hawaii—To construct fencing for the preservation of foliage and wildlife (mammal, silversword) at Kalopa State Park and Mauna Kea. | 40,000 |
| 2. Wailoa River State Park, Hilo, Hawaii—To fund display center; information dissemination including audio-visual displays and equipment; to plan and construct walkway lighting system. | 100,000 |
| 3. Waipio Valley Master Plan—Including but not limited to facilities such as cable cars, tramway for ingress and egress. | 10,000 |
| 4. Introduction of Animal, Kalopa Park. | 5,000 |
| 5. Introduction of Birds and Mammals, Hawaii. | 5,000 |
| 6. Kehena Ditch Water Source, Hawaii—Supplemental appropriation of prior appropriation for development of system. | 200,000 |
| 7. Hilo Water System Extension, Hilo, Hawaii—Plans and construction to develop the Olaa Flume spring source. | 459,000 |

C. DEPARTMENT OF TRANSPORTATION

(To be expended by the Department of Transportation)

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| 1. Akaka Falls Road, Hawaii—For the improvement of the narrow bridge at the upper end of the Akaka Falls Road. | 25,000 |
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2. Ahualoa Road and Hawaii Belt Road by Ahualoa—Planning and construction of overhead and warning lights. 2,000
3. Ahualoa Road and Hawaii Belt Road by Honokaa—Planning and construction of overhead and warning lights. 2,000
4. Kaawalii Gulch—Planning and construction of warning lights. 4,000
5. Laupahoehoe Gulch—Planning and construction of warning lights. 4,000
6. Saddle Road, Hawaii—To widen, pave and resurface the road. [To be supplemented by Item III-C-11, Act 197, SLH, 1971] 1,000
7. Maulua Gulch—Planning and construction of warning lights. 4,000
8. Hawaii Belt Road, North Hilo, Hawaii—For the acquisition of land, design, engineering, planning or other necessary work prior to construction of improvements. [Funds to be supplemented from Act 68, SLH, 1971, Section 4, Item H. 55] 1,000

Harbors—Small Boat

9. Comfort Stations, Hawaii—To plan and construct comfort stations at Mahukona, Puako, Honaunau, and other small boat harbor sites on the island of Hawaii. 75,000
10. Small Boat Ramp, Honaunau Bay, Kona, Hawaii—Plans and construction of a small boat ramp at Honaunau and deepening of a channel. 35,000

D. UNIVERSITY OF HAWAII

(To be expended by the Department of Accounting and General Services)

1. Greenhouses, Kona, Hawaii—Plans, construction and equipping of greenhouses in Kona for farm experiments. 50,000
2. Greenhouse, South Kohala, Hawaii—Plans, construction and equipping of greenhouse in South Kohala for farm experiments. 20,000
3. Plastic Hothouse, Volcano Experiment Station, Volcano, Hawaii—To supplement prior appropriation for construction of a plastic hothouse and for other repair and maintenance needed for the Hawaii Island Experiment Station. Unrequired funds may be used to construct similar facilities at other experiment stations on the island of Hawaii. 15,000

University of Hawaii, Hilo

4. Portable Classroom, Laboratory and Special Use Buildings—Plans, construction, and equipping of portable buildings. 400,000
5. Learning Resources Center—Plans for a resources center including library, instructional resources, information systems, bookstore and skills development facilities. 432,000

Various Campus Improvements

6. University of Hawaii, Hilo, Hawaii—For various improvements at University of Hawaii, Hilo Campus and Hawaii Community College. [To be supplemented by unexpended balances of Item E-63, Act 155, SLH, 1969; Item 28, Act 167, SLH, 1970; Item C-139 and 140, Act 68, SLH, 1971] 1,000
7. General Site Development and Utility Grid Installation for "Comprehensive College" Campus—Plans and construction of general site and utilities improvements including improvements to State lands to be acquired. 1,000,000
8. Minor CIP—Plans, construction and equipping of minor improvements, including construction of new facilities as well as modifications to existing structures. 50,000
9. Campus Center (Cafeteria-Student Union Building)—To supplement prior appropriations for plans, construction and equipping of Cafeteria-Student Union Building. 600,000
10. Mauna Kea Observatory Development, Hawaii—Planning and construction of mid-level facilities and transmission lines and associated equipment to provide electrical power from public utility sources to 1,000

observatory site at summit and mid-elevation support facility. [Funds to be supplemented by Item A-28, Act 38, SLH, 1966 and Item E-24, Act 217, SLH, 1967]

E. DEPARTMENT OF EDUCATION

1. Ka'u High and Pahala Elementary Schools, Hawaii—Supplemental funds for the planning and construction of industrial arts facilities. Covered walkways.	145,000
2. Keaau Elementary and Intermediate Schools, Hawaii—Plans for a cafetorium.	35,000
3. Mountain View Elementary School, Hawaii—Plans for an elementary classroom building.	20,000
4. Naalehu Elementary School, Hawaii—Supplemental funds for the construction of an 8-classroom building.	50,000
5. Pahoa High and Elementary Schools, Hawaii—Supplemental funds for the construction of a cafetorium and covered walkways.	50,000
6. Honokaa High and Elementary Schools, Hawaii—Acquisition of land, planning and construction of industrial arts facility and classrooms.	20,000
7. Laupahoehoe High and Elementary School, Hawaii—Planning and construction of athletic field to include football, baseball, and track facilities; plans for a music building for band and chorus; renovation and extension of science classrooms; supplemental funds for swimming pool. Funds may be used for any one of the above projects.	10,000
8. Paaui Elementary School, Hawaii—Renovation of science building.	20,000
9. Konawaena High and Intermediate School and Konawaena Elementary School, Hawaii—Relocation of water tanks, installation of pumps and fire hydrants and pipes.	100,000
10. Kealakehe Elementary School, Hawaii—Plans for 12-classroom building. Plans and construction of playground improvements. [Funds to be supplemented from Item F-166 of Act 187, SLH, 1970]	75,000
11. Konawaena High and Intermediate School, Hawaii—Plans and construction of an athletic field.	120,000
12. Kealakehe Elementary School, Hawaii—Plans for 12-classroom building. Plans and construction of playground improvements. [Funds to be supplemented from Item F-166 of Act 187, SLH, 1970]	1,000
13. Kohala High and Elementary School, Hawaii—Plans and construction of physical education and gym facilities, showers and lockers. [Funds to be supplemented from Item F-172 of Act 187, SLH, 1970 and Items III E-12 and III E-13 of Act 197, SLH, 1971]	1,000
14. Waimea Community-School Library, Hawaii—Plans and construction of a community-school library.	100,000
15. Keaau Community-School Library, Hawaii—Plans and construction of a community-school library.	100,000
16. Hawaii District Office—Repairs and alterations to Student Storage Facilities at intermediate and high schools.	75,000
17. Hawaii District Office, Hilo, Hawaii—To defray the expenses of the Hawaii High School Athletic Association events to be held in Hilo, Hawaii.	25,000

F. DEPARTMENT OF HAWAIIAN HOME LANDS

(To be expended by the Department of Hawaiian Home Lands)	
1. Community Center at Keaukaha-Panaewa Hawaiian Homes Project, Hawaii—Plans and construction of a community center.	50,000
2. Waimea Community Hall, Waimea, Hawaii—To supplement prior appropriations for equipment, furnishings, landscaping, and other appurtenances.	75,000

G. DEPARTMENT OF HEALTH

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|--|--------|
| 1. Acute Care Center at Hilo Hospital—Planning and construction of a 200-bed acute care center at the Hilo Hospital. | 70,000 |
| 2. Helicopter Landing Pad at the Hilo Hospital—Plans and construction of a helicopter landing pad at the Hilo Hospital. | 5,000 |
| 3. Honokaa Hospital—Painting of entire hospital and cottages, resurfacing of hospital roof enclosure of admitting office, and reparation and insulation of old hot water storage tank. | 60,000 |

H. DEPARTMENT OF SOCIAL SERVICES AND HOUSING

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|--|--------|
| 1. Human Development Center for Hilo, Hawaii—Plans and construction of a Human Development Center for Hilo, Hawaii. [Supplement to prior appropriations] [Appropriations made in Item I-15, Act 187, SLH, 1970 and Item III H-1, Act 197, SLH, 1971, shall be used for this purpose] | 85,000 |
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Hawaii Housing Authority

(To be expended by the Department of Social Services and Housing)

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|--|--------|
| 2. Senior Citizens Housing for Hilo, Hawaii—For construction of needed social service, recreational, health and other community facilities in conjunction with housing for the elderly. Funds may be used for onsite or offsite improvements, including the subsidizing or building costs to qualify for federal programs. [Appropriations made in Item III H-2, Act 197, SLH, 1971, shall be used for this purpose] | 1,000 |
| 3. Lanakila Low Cost Housing, Hawaii—Plans and construction of roof over basketball courts. | 30,000 |
| 4. Mohouli Low Cost Housing, Hawaii—Plans and construction of a park. | 20,000 |

I. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(To be expended by the Department of Accounting and General Services)

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| 1. Brantley Center, Honokaa—Acquisition and installation of dust collecting system; reparation of building. | 20,000 |
| 2. Kona Civic Center, Capt. Cook, South Kona, Hawaii—Plans, construction and equipment for a parking lot and new state office building. [Funds appropriated in Item III I-6, Act 197, SLH, 1971 and in Item D-16, Act 68, SLH, 1971 which are unencumbered as of June 30, 1972 may be used for this project] | 150,000 |

K. AID TO COUNTIES

(To be expended by the County of Hawaii)

Public Works

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| 1. Hilo Sewerage System, Hawaii—Plans, land acquisition and construction of Phase III-A of the system to include construction of sewer mains to service the Hilo College area. | 200,000
300,000x
500,000f |
| 2. Kona Sewerage System, Hawaii—Plans for the construction of a new sewerage system for the Kailua-Kealahou area. | 125,000
125,000x |
| 3. Public Safety Building, Hawaii—Plans, land acquisition and construction of public safety building to house police, fire, liquor and civil defense agencies. | 500,000
900,000x |
| 4. Honokaa Sewerage Systems, Hawaii—Plans for sewerage system. | 20,000 |
| 5. University of Hawaii Experiment Station, Paauilo, Hawaii—Improvements, including utilities systems. | 20,000 |

Roads

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| 6. Ainala Drive Improvements, Hawaii—Plans, land acquisition and improvement to road leading to Waiakaa-uka area. [To supplement prior appropriation] | 100,000
200,000x |
| 7. Laula Street Road, Hawaii—Improvements, paving of existing road. | 40,000
57,000x |

8. Kailua-Kawaihae Highway to Puako Spur Road, Hawaii—Plans, land acquisition and construction of access road from Kailua-Kawaihae Highway to Puako.	25,000 25,000x
9. Belt Road Improvements, Honuapo to Kahuku, Hawaii—Improvements to existing highway [To supplement prior appropriation]	200,000 250,000x
10. Kapoho-Kalapana Road, Hawaii—Plans, land acquisition and construction of highway connecting Kapoho and Keaukaha.[To supplement prior appropriation]	50,000 50,000x

Parks and Recreation

11. Old Kona Airport Park—Plans and construction of recreation-park facilities.	100,000
12. Hoolulu Park, Hawaii—Continued development of park complex. [To supplement prior appropriation]	100,000 100,000x
13. Laupahoehoe Beach Park Improvements, Hawaii—Plans and construction of recreational facilities at park in conformity with master plan. [To supplement prior appropriation]	50,000 50,000x 100,000f
14. Honokaa Park Development, Hawaii—Plans, land acquisition and construction of ball fields, restroom facilities, parking areas and other appurtenant facilities in conformity with master plan. [To supplement prior appropriation]	100,000 150,000x
15. Mahukona Beach Park Development, Hawaii—Plans for implementation of master plan.	25,000 25,000x
16. Kua Bay Development, Hawaii—Land acquisition for proposed beach park at Kua Bay.	100,000 200,000x 400,000f
17. North Kona Neighborhood Park, Hawaii—Plans, land acquisition and development of neighborhood park and playground.	100,000 100,000x
18. Kona Swimming Pool, Hawaii—Plans for construction of swimming pool.	25,000 25,000x
19. Ka'u Park Development, Hawaii—Plans and construction of track, bleachers, locker facilities, concession building and other appurtenant facilities. [To supplement prior appropriation]	50,000 100,000x
20. Kalapana Beach Park, Hawaii—Incremental expansion of facilities including land acquisition. [To supplement prior appropriation]	100,000 200,000x 250,000f
21. Puna Park Development, Hawaii—Initial development of park facility in conformity with master plan.	50,000 50,000x
22. Kaumana Park, Hilo, Hawaii—Expansion and construction of Kaumana Park, Hilo, Hawaii.	100,000
23. Onekahakaha Beach Park, Hilo, Hawaii—Development in accordance with the master plan of Onekahakaha Beach Park.	32,500 32,500x
24. Drag Strip Development, Hawaii—Construction of drag strip, equipment and other appurtenant items. [To supplement prior appropriation]	61,500 61,500x
25. County Parks in the Keaukaha area, Hawaii—Acquisition and development of County Parks in the Keaukaha area, between Reeds Bay and the Old Puumaila Hospital site.	100,000
26. North and South Hilo Parks, Hawaii—For the general improvements of North and South Hilo Parks including the improvement of Kolekole Beach Park Road.	50,000
27. Youth Center Facilities, North Hilo, Hawaii—Planning and construction of Youth Center facilities, North Hilo, Hawaii.	28,000

Department of Water Supply

(To be expended by the Department of Water Supply)

28. Ainaola Trunk Line and Reservoir, South Hilo, Hawaii—Improve transmission line and construction of storage facilities.	200,000
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29. Hamakua Water Development, Hamakua, Hawaii—Installation of transmission lines, pumps, storage tanks and purification facilities. [To supplement prior appropriations]	250,000
30. Hilo Reservoir Well and Storage, South Hilo, Hawaii—Drilling of a deep well including installation, pumps and controls and construction of a control building and a 1.0-MG concrete reservoir. [To supplement prior appropriations]	120,000
31. Napoopoo Water System, South Kona, Hawaii—Installation of a trunk line and construction of storage facilities.	350,000
32. Ninole Water System, North Hilo, Hawaii—Construction of water system including source development, transmission mains, pumps, tanks and appurtenances. [To supplement prior appropriations]	125,000
33. North Kohala Water Development, North Kohala, Hawaii—Drilling of exploratory well to supplement surface water source and improvement to feeder mains.	100,000
34. Pahala Exploratory Well, Ka'u, Hawaii—Drilling of exploratory well to supplement surface water source and installation of pump and controls.	90,000
35. Wailea-Hakalau Study, South Hilo, Hawaii—Conduct feasibility study regarding construction of water system.	20,000
36. Waimea-Puukapu Trunk Line, Phase II, South Kohala, Hawaii—Installation of transmission mains and construction of storage facilities. [To supplement prior appropriations]	200,000
37. Keaau-Pahoa Trunk Line—Plans for the installation of transmission mains and construction of storage facilities.	50,000
38. Pepeekeo Source and Transmission Line, Hawaii—For the planning and construction.	100,000
39. Papaikou Well, Hawaii—For the construction of the Papaikou Well.	70,000
40. Papaikou-Paukaa Water System, Hawaii—Plans for the construction of the Papaikou-Paukaa water system.	20,000
41. Laupahoehoe Water System, Hawaii—Extension to Waipunalei and Laupahoehoe Point.	50,000
42. North Kona Water Project, Hawaii—Plans for the construction of a water system along the Hualalai Road from the intersection of the Hualalai Road and the Mamalahoa Highway to the Old Sugar Mill Road.	25,000 25,000x
43. Water Line for Panaewa Farm Lots, Hawaii—Plans and construction of water line.	40,000
Others	
44. Research and Development, Hawaii—Field investigation and study to determine the possibility of relating aquaculture and thermal power generation.	100,000 100,000x 200,000f
45. Kailua-Kona Parking Lot, Hawaii—Land acquisition and construction of municipal parking lot in Kailua-Kona, Hawaii. [To supplement prior appropriation]	100,000 200,000x

IV. COUNTY OF KAUAI

B. DEPARTMENT OF LAND AND NATURAL RESOURCES

(To be expended by the Department of Land and Natural Resources)

Land Development

1. Wailua-Kai Reservoir, Kauai—Plans and construction for the development of Wailua-Kai Reservoir area into Wailua House lots.	25,000
2. Wailua Mango Grove Subdivision, Kauai—Plans and construction for drainage system. [To be matched by County of Kauai]	25,000 25,000(x)

Fish and Game

3. Game Planting and Propagation, Kauai—Restocking of game birds and mammals on Kauai.	20,000
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State Parks

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| 4. Waimea Landing, Kauai—Plans and construction for the reconstruction of Waimea Landing for recreational facilities. [Supplemental funds to prior appropriation] | 50,000 |
| 5. Acquisition of Land, Kauai—Acquisition of land for beach rights-of-ways situated in Kilauea, Kauai.—Dirt road approximately 5,000 linear feet in length from Kuhio Hwy. to Larson Beach across Waioli Mission property. | 100,000 |

Dirt road and footpath approximately 6,000 linear feet in length from Kuhio Hwy. to shoreline about 2,000 feet southeasterly of Kepuhi Point across Kilauea Plantation property.

Dirt road and footpath approximately 4,000 linear feet in length from Kuhio Hwy. to Pilaa Beach across Lucas Estate property.

Dirt road and footpath approximately 5,000 linear feet in length across Lucas Estate and Kilauea Plantation properties.

Stone bed road approximately 7,000 linear feet in length from Kilauea Lighthouse road to Kilauea Beach across Kilauea Plantation property.

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| 6. Hanalei River, Kauai—Clearing of trees and brush from the bank of the river. | 10,000 |
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Water and Land Development Division

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| 7. Water Quality Management Planning Study, Kauai—Study and report to qualify for federal grants. | 125,000
100,000(x) |
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C. DEPARTMENT OF TRANSPORTATION

(To be expended by the Department of Transportation)

Airports

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| 1. Lihue Airport, Kauai—Plans for the North-South runway. | 100,000 |
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Harbors—Small Boat

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| 2. Kukuila Small Boat Harbor, Kauai—Land acquisition, plans and construction for parking space and restroom facilities. | 125,000 |
| 3. Hanalei Boat Landing, Kauai—Repair and maintenance of the Hanalei boat landing, including refurbishing the existing shed, piling and supports for pier needed to permit continued foot traffic. | 25,000 |
| 4. Hanalei River, Kauai—Reset channel markers and continue dredging and other improvements to Hanalei River mouth. | 10,000 |

Highways

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|---|------------------------|
| 5. Kekaha Seawall, Kauai—Plans and construction of addition to seawall along Kaunualii Highway. | 180,000 |
| 6. Complete Phase I of Drag Strip, Kekaha, Kauai—Plans and construction for toilet, control tower, return track, guard rails, fencing, bleachers, and other improvements. | 177,000 |
| 7. Phase II of Motorcycle Track, Kekaha, Kauai—Plans and construction for tower, toilet, bleachers, roadways, and other improvements. | 117,000 |
| 8. Route 56, Kuhio Highway, Repairs to Hanalei Bridge, Kauai—Structural improvements to existing bridge. | 122,000(a) |
| 9. Ahukini-Nawiliwili Cut-off Road, Kauai—Construction of a 2-lane highway, including landscaping, from Ahukini Road to Rice Street. | 91,000(a)
74,000(f) |

D. UNIVERSITY OF HAWAII

(To be expended by the Department of Accounting and General Services)

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| 1. Wailua Experiment Station, Kauai—Development of a taro planting machine, including research and construction. [To be expended by the Director, Wailua Experiment Station] | 40,000 |
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E. DEPARTMENT OF EDUCATION

Schools

1. Kapaa High and Elementary School, Kauai—Supplemental funds for the construction of physical education facilities. 50,000
2. Kapaa Elementary School, Kauai—Construction of an 8-classroom building. 341,000
3. Kekaha Elementary School, Kauai—Plan and construct Special Classroom Building. Include purchase of furniture and equipment and landscaping. 300,000
4. Kaumakani Elementary School, Kauai—Acquisition of land. 200,000
5. Kapaa High and Intermediate School, Kauai—Extension of existing cafeteria. 40,000
6. Waimea High and Intermediate School, Kauai—Construction and equipment for classroom buildings and library. [Funds to be supplemented from Item F-228 of Act 155, SLH 1969] 1,000
7. Kalaheo Community-School Library, Kauai—Plans and construction of library building, including purchase of furniture and equipment and landscaping. 344,000
8. Kapaa High and Elementary Schools, Kauai—Plans for construction of 16-classroom building. Plans and construction of physical education facilities. Ground improvements and renovation of existing facilities. [Funds to be supplemented from Items F-226 and F-229 of Act 155, SLH 1969, and Item F-187 of Act 187, SLH 1970] 1,000
9. Lihue Community School basketball complex—Planning, engineering, development and improvements to existing Wilcox Elementary School basketball court. 42,000
10. Waimea High and Intermediate School—Construction of library building which includes purchase of furniture, equipment and landscaping. 330,000
11. Koloa Elementary School, Kauai—Plan and construct Administration Building. Include purchase of furniture and equipment and landscaping. 210,000

G. DEPARTMENT OF HEALTH

Act 97 Hospitals

1. Kauai Veterans Memorial Hospital, Kauai—Plans, construction, equipment, and furnishing for Nurses Quarters. 70,000
2. Samuel Mahelona Memorial Hospital, Kauai—Planning for long term care facilities. 50,000

Grant-in-Aid to Hospital

(To be expended by the Department of Health)

3. Wilcox Memorial Hospital, Kauai—Plans and construction for ancillary services, including equipment, and improvements. 150,000

I. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(To be expended by the Department of Accounting and General Services)

1. West Kauai Senior Center, Waimea, Kauai—Plans, for community and senior citizens center, including space for Waimea District Court. 20,000

K. AID TO COUNTIES

(To be expended by the County of Kauai)

Parks and Recreation

1. New Kapaa Park Development, Kauai—Fill underdeveloped area approximately 2 feet higher than current level (7 acres), plus additional fill for Little League area; construct flooding light system for softball; backstops for softball and baseball diamonds and toilet facilities. [To be matched by county] 100,000
100,000(x)

2. Kekaha Beach Park Multi-Purpose Pavilion, Kauai—Plans, construction and equipment for multi-purpose pavilion to include kitchen and storage facilities and open air meeting rooms near Lindsay Faye Pool. [To be matched by county]	98,000 98,000(x)
3. Hanapepe Recreation Center, Kauai—Plans and construction of recreational and multi-purpose center, to include meeting rooms, parking and other facilities; repair of tennis court facilities; and construction of bleachers. [To be matched by county]	30,000 30,000(x)
4. Isenberg Field, Kauai—Land acquisition, plans and construction for multi-purpose building and restroom facilities.	250,000
5. Koloa County Park Expansion, Kauai—Plans and construction of tennis, handball, basketball, volleyball courts, restroom and other facilities. [To be matched by County]	150,000

Special County Facility

6. Kauai War Memorial Convention Hall, Extension Kauai—Plans and construction for the expansion of the Convention Hall; to include senior citizen center and community center. [To be matched by county]	50,000 50,000(x) -
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Kauai Planning Commission

7. Development Planning for Kapaa, Kauai—Development and updating of the master plan for the entire Kapaa Town Complex.	25,000
8. Development Plan of Communities, Kauai—Preparation of development plans of each community core within the Island. Within the framework of the Kauai General Plans, prepare development plans for the urban cores of the Island showing:	30,000 30,000(x)

Placement of specific public and quasi-public facilities.

On-street and off-street parking locations.

Vehicular and pedestrian circulation systems and patterns.

Street widening, sidewalk improvements, etc..

Urban rehabilitation where required.

Financial Programs in order of priority.

Kauai Civil Defense Agency

9. Kauai Civil Defense Emergency Operating Center, Kauai—Construction. [To supplement prior appropriation covered under Act 68, 1971, item G-16]	36,000
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Others

10. Educational Television—Mount Kahili, Kauai—Plans and construction of ETV Tower and other improvements. [Supplemental funds to prior appropriation]	25,000
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Sewerage

11. Hanapepe-Elleele Sewerage System, Kauai—Planning and construction of a sewerage system, including a sewage treatment plant. [Funds in item IV-K-7 of Act 197, SLH 1971, may be utilized for this appropriation]	1,000
12. Kapaa Sewerage System, Kauai—Plans and construction of sewerage system.	340,000
13. Lihue Sewerage System, Kauai—Plans and construction of sewerage system.	175,000
14. Poipu-Koloa Sewerage System, Kauai—Plans and construction of sewerage system.	190,000
15. Wailua Sewerage System and Plant Expansion, Kauai—Plans and construction of sewerage system, including expansion of sewer treatment plant.	265,000

Department of Water

16. Lihue, Kauai—Plans and construction for drilling exploratory well, installing pumping unit and connecting pipeline.	240,000
17. Hanapepe, Kauai—Supplemental appropriation to complete the development of new source and connecting pipeline.	100,000
18. Kalaheo, Kauai—Supplemental appropriation to complete the development of new source and connecting pipeline.	130,000

SECTION 3. The appropriations and authorization in Section 2 include land purchase, plans, site preparation, improvements to land, construction and necessary equipment.

SECTION 4. The designated expending agency is authorized to delegate to other state or county agencies the planning and construction of projects under Section 2 when it is determined by such agency that it is more advantageous to do so.

SECTION 5. The governor shall determine when and the manner in which authorized projects shall be initiated. In releasing funds for projects, the governor shall consider the objectives of the user agency, its programs, the scope and level of the user agency's intended service; and the means, efficiency, and economics by which the project will meet the objectives of said user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of said user agency in the most efficient and economical manner possible.

SECTION 6. The negotiation for the purchase of land by State agencies shall be subject to the approval of the governor. Private lands may be acquired for the purpose of exchange for federal lands when the governor determines that such acquisition and exchange are necessary for the completion of any herein authorized projects.

SECTION 7. In case the amount specified for any capital improvement project shall not be wholly required to complete the work of such project or after it is definitely found by the expending officer that not more than a specified amount will be required to complete said work, such unrequired amount may be expended with the approval of the governor for any other capital improvement project authorized by the legislature in this Act or in a prior year, or which may be authorized by the legislature in the future.

SECTION 8. Where the governor or any agency of any government unit is able to secure federal funds or other property made available under any Act of Congress, or any funds or other property from private organizations or individuals, to be expended in connection with or for the planning and/or construction of any program or works authorized by this Act, the governor or agency shall have the power to enter into such undertaking with the proper offices or agencies of the federal government or private organization or individuals, if approved by the governor. While most federal-aid allocations are known and local matching funds are provided in this Act, there may be programs for which federal-local cost sharing is not yet determined. In such cases,

the availability of federal funds shall be construed as a reduction of State costs whenever possible.

SECTION 9. In connection with all State park projects in Section 2, the board of land and natural resources may use its present staff, summer student help, and such temporary personnel who shall be exempted from the provisions of Chapter 76 and 77, Hawaii Revised Statutes, and who are unemployed and are duly registered as unemployed with the department of labor and industrial relations. The board may, upon approval of the governor, enter into contract for the necessary equipment, supplies, materials, labor, professional service and technical assistance to be used in the projects.

SECTION 10. Where appropriations or authorizations for department of education or university of Hawaii projects specify the number of units, classrooms, partitions, etc. and the amount appropriated or authorized is insufficient to plan for and construct the specified number, the agency may plan for and construct less than the number specified.

SECTION 11. If any portion of this Act or its application to any persons or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 12. In the event the State should assume the direct operation of any non-public agency receiving State funds under the provisions of this Act, such funds shall be applied as a credit to the State against such capital costs as land, structures, and equipment, in acquiring the non-public agency.

SECTION 13. Any law to the contrary notwithstanding, the appropriations made for capital investment projects included in this Act shall not lapse at the end of the fiscal period for which appropriations are made, provided that all unencumbered appropriations shall lapse on June 30, 1977.

SECTION 14. This Act, upon its passage and approval in the manner provided by the constitution of the State, shall take effect on July 1, 1972.

(Approved June 2, 1972.)

ACT 177

S. B. NO. 919

A Bill for an Act Amending Chapter 281, Hawaii Revised Statutes, Relating to Intoxicating Liquors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The second paragraph of section 281-2, Hawaii Revised Statutes, is amended to read as follows:

“Any person who manufactures any of the articles mentioned in this section may purchase and possess alcohol for that purpose, but he shall not

sell, use, or dispose of any alcohol otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, syrup, or article named in paragraphs (2), (3), and (4) of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation thereof."

SECTION 2. Section 281-4(c), Hawaii Revised Statutes, as amended, is further amended to read as follows:

"(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are sold or provided for compensation, to sell or provide any food or beverages to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by him on the premises, to wit:

- (1) any minor,
- (2) any person at the time under the influence of liquor,
- (3) any disorderly person,
- (4) any person known to be addicted to the excessive use of liquor,
- (5) any person, for consumption in any vehicle on the premises; provided, that the sale of or the providing of food or beverages to or for a minor who has or is about to obtain liquor for consumption by him on the premises shall not be deemed to be a violation of this subsection if, at the time, the person so selling or providing food or beverages was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that he so acted in good faith."

SECTION 3. Section 281-32, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-32. Licenses, temporary. A temporary license of any class and kind specified in section 281-31 may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class and kind issued by the liquor commission at least one year immediately prior to the date of filing of the application for temporary license.
- (2) The license of the same class and kind then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct.
- (3) The applicant for temporary license shall have filed with the commission an application for the transfer to him of the license of the same class and kind then in effect for the premises.
- (4) The application for temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall be refunded in full.
- (5) A temporary license shall be for a period of not in excess of sixty days. The license may be renewed at the discretion of the commission

for not more than one additional sixty day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this section and section 281-31.

- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency or certified check for the liquor before or at the time of delivery of the liquor to him.
- (7) Sections 281-52 and 281-54 and sections 281-56 to 281-61 shall not apply to any application for temporary license."

SECTION 4. The third paragraph of section 281-39, Hawaii Revised statutes, as amended, is further amended to read as follows:

"The application shall state the name of the applicant, his age, residence, and place of business, the name and address of the manufacturer or wholesale dealer he represents and shall be accompanied by a statement from the manufacturer or wholesale dealer to the effect that the applicant has been appointed as its solicitor or representative. All sales and all orders taken for liquor by any such solicitor or representative shall be subject to the rules and regulations of the commission for the county within which the sales are made or orders taken."

SECTION 5. The first paragraph of section 281-53, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-53. Application; penalty for false, statements. Every application for a license or for the renewal of a license or for the transfer of a license shall be in writing, signed and, except for the renewal of a license, verified by the oath of the applicant, or in the case of a corporation or unincorporated association by the proper officer or officers thereof, or if a partnership by a majority of the general partners thereof, made before any official authorized by law to administer oaths, and shall be addressed to the liquor commission, and set forth:

- (1) The full name, age and place of residence of the applicant; and if a copartnership the names, ages, and respective places of residence of all the partners; if a corporation or joint-stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members;
- (2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined therefrom;
- (3) The class and kind of license applied for;
- (4) Any other matter or information pertinent to the subject matter which may be required by the rules and regulations of the commission."

SECTION 6. Section 281-58, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-58. Protests. Protests against the granting of a license upon such application may be so filed by any registered voter for the election precinct within which the applicant proposes to establish or continue his business under the license applied for, or by any person owning in fee simple any real estate or holding the same under a recorded lease, situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate."

SECTION 7. Section 281-59, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-59. Hearing. Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest, and shall within fifteen days thereafter give its decision granting or refusing the application; provided that if a majority of the registered voters for the precinct or a majority of the persons owning such real estate or holding the same under recorded leases have duly filed or caused to be filed their protests against the granting of the license upon the original application therefor, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise the commission may in its discretion grant or refuse the same. The commission may also, with like discretion, grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and may of its own motion, or on the suggestion of any member thereof, or of the inspector take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but in such case if the objection is one to which the applicant should be given a reasonable time to answer, a continuance may be granted in the discretion of the commission; provided, that in any case where any person affected by such decision petitions the commission for a rehearing of the application and on oath alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the commission seems sufficient to warrant a rehearing, such rehearing may be granted by the commission in its discretion. When a rehearing is allowed notice thereof shall be given to the applicant and to his opponents, by publication or otherwise as the commission shall direct."

SECTION 8. The first paragraph of section 281-97, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-97. When sale without license authorized. In case a license is revoked or canceled or not renewed, the licensee may with the permission of and upon the conditions set by the liquor commission sell intoxicating liquors then in his possession within sixty days, or within such additional time allowed by the commission, unless under this chapter the same are seized or forfeited."

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

*Edited accordingly.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 2, 1972.)

ACT 178

S. B. NO. 2013-72

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 359G-4, Hawaii Revised Statutes, is amended by adding thereto a new subsection to read as follows:

“(g) Except as hereinafter provided, the Authority is empowered to develop, on behalf of the state or in partnership with others, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules and regulations of any governmental agency relating to zoning and construction standards for subdivisions, development and improvement of land and the construction and sale of homes thereon; provided that:

- (1) The Authority finds the project is (i) consistent with the production of housing under this chapter, and meets minimum requirements of good design, pleasant amenities, health, safety and coordinated development, and (ii) in harmony with the general purpose and intent of this chapter.
- (2) The development of the proposed project does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities.
- (3) The Authority shall have first presented the plans and specifications for the project to the legislative body of the county in which the project is to be situate, and the legislative body, which shall have the right to approve or disapprove the project within 45 days after presentment, shall have approved the project within 45 days. On the forty sixth day after presentment, a project not disapproved shall be deemed approved by the legislative body of the county. The approval shall be based, or deemed to be based, upon a finding that the spirit of any applicable ordinance of that county in maintaining public welfare and safety is not prejudiced by the variance of the proposed project from such ordinance.

The final plans and specifications for the project approved by the legislative body, shall constitute the zoning, building, construction and subdivision standards for that project. No action shall be prosecuted or maintained against any county, its officials or employees, on account of actions taken by them in reviewing, approving or disapproving such plans and specifications. For purposes of Sections 501-85 and 502-17, the executive director of the Authority or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 2, 1972.)

ACT 179

H. B. NO. 1672-72

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Statement of Findings and Policy. Nationally and internationally, traditional higher education has begun to explore alternative means of providing educational programs for those heretofore unable to take advantage of existing fixed day schedules and programs for a variety of reasons. Higher education programs for these potential students on a continuing basis are being either developed or have been actually provided throughout the United States in increasing numbers with a number of different educational options. Great Britain, Japan, Australia, and other countries are also involved in establishing higher education programs and delivery systems which depart significantly from the traditional mode and designed to serve those unable to avail themselves of established schedules and programs.

In Hawaii, the Legislature recognizes that the State must increasingly provide opportunities for higher education to all qualified residents. This commitment has been honored through support of the University of Hawaii and the Community Colleges. The time has come, however, when provisions must be made for mature adults to initiate or continue their quest for higher education, including degrees, at times and places and in programs more suitable, appropriate, and convenient as compared to the existing programs for recent high school graduates.

The Legislature also finds that traditional means of evaluating academic performances may not be applicable to this developing new adult clientele.

Innovative but sound procedures must be developed, together with the new approach, to enable mature adults to apply for credit in the new programs throughout evaluation of their individual experiences and background.

SECTION 2. The University of Hawaii is hereby mandated to establish research and development capabilities for the program as described to be conducted by the University of Hawaii on a statewide basis with emphasis upon increasing educational and degree options for those unable to take advantage of existing university programs.

SECTION 3. The research and development phase is to be completed, and a comprehensive report of the findings be presented to the Legislature prior to February 1, 1973.

SECTION 4. This Act shall take effect on July 1, 1972.

(Approved June 3, 1972.)

ACT 180

H. B. NO. 1780-72

A Bill for an Act Relating to the State Boating Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 266-20, Hawaii Revised Statutes, is amended to read:

"Section 266-20 Boating program; payment of costs of administration. The cost of administering a comprehensive boating program including the cost of (1) operating and maintaining properties under the control and management of the department of transportation which are used principally for recreation or the landing of fish; (2) improving boating safety; (3) operating a vessel registration and boating casualty investigation and reporting system; (4) enforcing boat harbor, navigation, shore waters and beach laws and regulations; (5) abating air and water pollution related to small craft, and (6) other boating program activities shall be paid from the boating special fund; provided, if funds collected from the foregoing operations and other sources are insufficient to meet all such costs general fund appropriation may be used to augment the boating special fund, for the purposes thereof."

SECTION 2. Section 267-13, Hawaii Revised Statutes, is amended to read:

"Section 267-13 Disposition of revenues. All fees and penalties collected pursuant to section 267-12 shall be deposited in the boating special fund."

SECTION 3. Section 266-17, Hawaii Revised Statutes, is amended to read:

"Section 266-17 Rates, how fixed. The department of transportation shall adjust and fix and enforce the rates assessable and chargeable by it in respect to dockage, wharfage, demurrage, and other rates and fees pertaining to harbors, wharves, and properties managed and operated by it so as to produce from the rates and fees:

- (1) In respect to all such harbors, wharves, and other properties, except such as are principally used for recreation or the landing of fish, revenues sufficient to:
 - (A) pay when due the principal of and interest on all bonds and other obligations for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, or which are otherwise payable from the revenue or from a special fund maintained or to be maintained from the revenue, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds or other revenue obligations and interest thereon, which are payable from the special fund, including reserves therefor;
 - (B) provide for all expenses of operation and maintenance of the properties, including reserves therefor, and the expenses of the department in connection with operation and maintenance; and

- (C) reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements, or to refund any of the improvement bonds, excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties.
- (2) In respect to properties under its control and management which are principally used for recreation or the landing of fish, revenues may be collected based on the expenses of operation and maintenance and the cost to the State of the improvements used; provided, that rates established under this paragraph shall be reasonable and shall be fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. All revenues shall be deposited in the boating special fund."

SECTION 4. Section 248-8, Hawaii Revised Statutes, is amended to read:

"Section 248-8 Special funds in treasury of State. There are created in the treasury of the state three special funds to be known, respectively, as the state highway fund, the airport revenue fund and the boating special fund. All taxes collected under chapter 243 in each calendar year, except the 'county of Hawaii fuel tax', 'city and county of Honolulu fuel tax', 'county of Maui fuel tax', and 'county of Kauai fuel tax', shall be deposited in the state highway fund; provided, that all taxes collected under chapter 243 in respect to gasoline or other aviation fuel sold for use in or used for airplanes shall be set aside in the airport revenue fund and provided, further, that all taxes collected under chapter 243 with respect to liquid fuel sold for use in or used for small boats shall be deposited in the boating special fund. 'Small boats' as used herein means all vessels and other watercraft except those operated in overseas transportation beyond the state and ocean-going tugs and dredges. The director of transportation is directed, prior to July 1, 1973, and every three years thereafter to establish standards or formulas that will as equitable as possible establish the percentage of total taxes collected under chapter 243 in each fiscal year that are derived from the sale of liquid fuel for use in or used for small boats. The amount so determined shall be deposited in the boating special fund."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect on July 1, 1972.

(Approved June 3, 1972.)

*Edited accordingly.

ACT 181

H. B. NO. 1804-72

A Bill for an Act Relating to the Professional Corporation Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 416-146, Hawaii Revised Statutes, is amended to read as follows:

"Section 416-146 Issuance of shares. Shares of capital in a professional corporation may be issued only to a licensed person, and any shares issued in violation of this restriction shall be void; provided however, that notwithstanding any other section of this chapter, any psychologist certified under the provisions of Chapter 465 may own stock in a medical corporation as long as such person's status as a stockholder is permitted under the rules and regulations issued by the Board which regulates the medical profession and the sum of all shares not held by a physician in a medical corporation does not exceed 49 percent of the total number of shares. No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person, other than another licensed person who is a shareholder of the same corporation, with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy, or other arrangement shall be void."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect on January 1, 1973.

(Approved June 3, 1972.)

ACT 182

H. B. NO. 1828-72

A Bill for an Act Relating to Place of Performance of the Marriage Ceremony.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship is legitimate or illegitimate;
- (2) The male at the time of contracting the marriage is at least eighteen years of age and the female at least sixteen years of age;
- (3) The man does not at the time have any lawful wife living and that the woman does not at the time have any lawful husband living;

*Edited accordingly.

- (4) Neither of the parties is impotent or physically incapable of entering into the marriage state;
- (5) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (6) Neither of the parties is a person affected with leprosy or afflicted with any loathsome disease concealed from, and unknown to, the other party; and
- (7) It shall in no case be lawful for any persons to marry in the State without a license for that purpose duly obtained from the agent appointed to grant marriage licenses;

provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a male under the age of eighteen years but in no event under the age of seventeen years, and for a female under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2. The marriage ceremony may be performed any place in the State."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 183

H. B. NO. 1987-72

A Bill for an Act Relating to the Farm Loan Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is hereby appropriated out of monies in the treasury received from general obligation bond funds the sum of \$1,200,000, or so much thereof as may be necessary, to the farm loan revolving fund, as provided in section 155-14, Hawaii Revised Statutes.

SECTION 2. The director of finance is authorized to issue general obligation bonds of the State in the amount of \$1,200,000 to be used for the purposes of this Act.

SECTION 3. The sum appropriated herein shall be expended by the department of agriculture.

SECTION 4. This Act shall take effect on July 1, 1972.

(Approved June 3, 1972.)

*Edited accordingly.

ACT 184

H. B. NO. 2046-72

A Bill for an Act Relating to the Practice of Law, Amending Chapter 605 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 605 of the Hawaii Revised Statutes is amended as follows:

(a) Section 605-1 is amended to read as follows:

"Sec. 605-1. Attorneys' qualifications.

(a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole power to revoke or suspend the license of any such practitioner.

(b) In order to be licensed by the supreme court, a person shall be a citizen of the United States of good moral character, and satisfy such residence and other requirements as the supreme court may prescribe."

(b) Section 605-2 is amended to read as follows:

"Sec. 605-2. Attorneys; license required.

Except as provided by the rules of court, no person shall be allowed to practice in any court of the State unless he has been duly licensed so to do by the supreme court; provided, that nothing in this chapter shall prevent any person, plaintiff, defendant, or accused, from appearing in person before any court, and there prosecuting or defending his own cause, without the aid of legal counsel; provided further, that in the district courts sections 605-11, 605-13, and 633-28 shall apply."

(c) Section 605-6 is amended to read as follows:

"Sec. 605-6. Rules. The supreme court may prescribe qualifications for admission to practice and rules for the government of practitioners."

(d) Section 605-7 is amended by deleting from the first line the word "so" and by inserting in the second line after the word "licensed" the words "by the supreme court".

(e) Section 605-8 is amended to read as follows:

"Sec. 605-8. Practice in all court; fees. The practitioners shall have the right to practice in all the courts of the State, and to appear therein as attorneys in behalf of persons who may choose to retain them, for the prosecution or defense of actions.

Attorney's fees or commissions taxed or allowed by the court shall be collected for the benefit of the attorney."

(f) Section 605-11 is amended by deleting from the fourth line the words "cancellation and", and by inserting after the word "revocation" in the fourth line the words "or suspension by the Supreme Court."

(g) Section 605-13 is amended to read as follows:

"Sec. 605-13. District courts, cases involving military vehicles. Any legal officer of the United States military forces, to the extent that he is authorized

or required by his respective branch of service, may without license represent military personnel in the district courts in any case which arises out of the driving of a military vehicle."

(h) Section 605-15 is amended by deleting from the second line the words "sections 605-14 to 605-17", and inserting in lieu thereof "section 605-14".

(i) Section 605-17 is amended by deleting from the first line the words "sections 605-14 to 605-16" and inserting in lieu thereof "section 605-14".

(j) Sections 605-3, 605-4, 605-9, 605-10, and 605-12 are deleted.

(k) The chapter heading is changed to read "Attorneys".

SECTION 2. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 3. This Act upon its approval shall take effect on July 1, 1973.

(Approved June 3, 1972.)

ACT 185

H. B. NO. 2144-72

A Bill for an Act Relating to Chapter 183, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 183-41, paragraph (1), Hawaii Revised Statutes, is amended to read as follows:

"(1) General powers. The department shall, after notice and hearing as herein provided, review and redefine the boundaries of forest and water reserve zones as established by or under the authority of this part. The department may allow temporary variances from zoned use where good cause is shown and where the proposed variance is for a use determined by the department to be in accordance with good conservation practices. The department may establish subzones within the forest and water reserve zones, which subzones shall be restricted to certain uses. In establishing permitted uses in the subzones, the department shall give full consideration to all available data as to soil classification and physical use capabilities of the land so as to allow and encourage the highest economic use thereof consonant with requirements for the conservation and maintenance of the purity of the water supplies arising in or running or percolating through the land. The department shall also give full consideration to the preservation of open spaces or areas, as defined in section 201-2(7), so as to maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas for public use and enjoyment. Provided, the board shall hold a public hearing in every case involving the proposed use of land in a conservation zone for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of the hearing shall be published in accordance with the

public notice requirements of section 183-41(3). As used herein, the term 'commercial purposes' shall not include the use of land for utility purposes."

SECTION 2. Section 183-41, Hawaii Revised Statutes, is further amended by adding thereto a new paragraph following sub-paragraph (4) to read as follows:

"The term 'land', whenever used herein, shall mean and include any estate or interest therein, and the term 'owner of land' or 'landowner', including any reference thereto, shall mean an owner of land, or of any estate or interest therein."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 186

H. B. NO. 2190-72

A Bill for an Act Relating to the Limitation of Actions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 657-3 of the Hawaii Revised Statutes is amended to read as follows:

Sec. 657-3 Counterclaim. (a) In the cases enumerated in subsection (b), all the provisions of this part, or any other statute of limitations, shall apply to a claim stated as a counterclaim against an opposing party in the same manner as if an action thereon had been commenced at the time when the opposing party commenced his action or served the pleading stating his claim, or if a different time is applicable to the opposing party's claim under the provisions of this section then at that time.

(b) Subsection (a) shall apply if the claim stated as a counterclaim:

- (1) Consists of a liquidated debt or demand, or a debt or demand capable of being ascertained by calculation; or
- (2) Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Within the meaning of this section a counterclaim includes a claim asserted against the plaintiff by a third-party defendant and in that situation the plaintiff is deemed an opposing party.

SECTION 2. Chapter 657 of the Hawaii Revised Statutes is amended by adding thereto a new Section 657-7.5, to read as follows:

"Sec. 657-7.5 Third-party defendants, time in which plaintiff may amend. When a defendant, against whom action has been timely brought, brings in a third-party defendant who is or may be liable to him or to the plain-

*Edited accordingly.

tiff for all or part of the plaintiff's claim against him, plaintiff within thirty days after the date of filing of the third-party defendant's answer, may assert against the third-party defendant any claim, arising out of the original transaction or occurrence that is also the subject matter of the third-party plaintiff's claim against the third-party defendant, which would have been timely if the third-party defendant had been joined originally as a defendant, notwithstanding any statutory period of limitations otherwise applicable to plaintiff's claim. Nothing herein shall preclude the plaintiff from asserting any claim which he might have asserted without the benefit of this section."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 187

H. B. NO. 2249-72

A Bill for an Act Relating to the Land Use Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the Land Use Law to clarify the procedures for public hearings on amendments to district boundaries.

SECTION 2. Section 205-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 205-4 Amendments to district boundaries. Any department or agency of the State or county, or any property owner or lessee may petition the land use commission for a change in the boundary of any district. Within five days of receipt, the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within forty-five days after receipt of the petition by the county, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. Upon written request by the county planning commission, the commission may grant an extension of not more than fifteen days for the receipt of any comments and recommendations. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change.

After sixty days but within one hundred and twenty days of the original receipt of a petition, the commission shall hold a public hearing in the appropriate county in accordance with the requirements of section 205-3. The commission shall notify the persons and agencies that may have an interest in the subject matter of the time and place of the hearing. Within a period of not more than ninety days and not less than forty-five days after the hearing, the

*Edited accordingly.

commission shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the general intent and spirit of this chapter and to assure substantial compliance with representations made by the petitioner in seeking a boundary change. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified, and either of the following requirements has been fulfilled:

- (1) The petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or
- (2) Conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 188

H. B. NO. 2571-72

A Bill for an Act Relating to the Publication of Legal Notices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings and purpose.** The legislature finds that although governmental agencies have complied with the literal meaning of statutes relating to the publication of legal notices, these agencies have not consistently satisfied the intent of the law, which includes notifying the people that will be affected by an upcoming action. Because of the current practices of agencies which merely meet the minimum legal requirements, many people are not informed about proposed public hearings. In order to establish open lines of communication between residents and the governmental agencies, it is imperative that the residents receive notice of future hearings. Therefore, it is the purpose of this Act to require that governmental agencies publish legal notices in newspapers in the counties affected by the proposed action, as well as in newspapers of statewide circulation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. **Publication of legal notices.** Notwithstanding any law to the contrary, all governmental agencies scheduling a public hearing shall publish a notice in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, to inform the public of the time, place

*Edited accordingly.

and subject matter of such public hearing. This requirement shall prevail whether or not the publication by the governmental agency of a notice of public hearing in a newspaper of general circulation is specifically required by law, and shall be in addition to other procedures required by law."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 189

S. B. NO. 1411-72

A Bill for an Act Relating to Tort Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 663-1, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 663-1 Torts, who may sue and for what.** Except as otherwise provided, all persons residing or being in the State shall be personally responsible in damages, for trespass or injury, whether direct or consequential, to the person or property of others, or to their spouses, children under majority, or wards, by such offending party, or his child under majority, or by his command, or by his animals, domitae or ferae naturae; and the party aggrieved may prosecute therefor in the proper courts."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 190

S. B. NO. 1419-72

A Bill for an Act Relating to Certain Court Appearances to Prosecute or Defend without Being Licensed.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 605-13, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 605-13 District court practitioner not to practice without license.** No person shall be allowed to practice law in the district courts without license; provided that any person may appear to prosecute or defend his own cause, and that of any one of his parents, brothers, sisters, spouse, and descendants;

*Edited accordingly.

and provided that any legal officer of the United States army, navy, or air force, to the extent that he is authorized or required by his respective branch of service, may without license represent military personnel in the district courts in any case which arises out of the driving of a military vehicle."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 191

S. B. NO. 1422-72

A Bill for an Act Relating to the Husband's Liability for the Torts of His Wife.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 573-7, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 573-7 Husband's liabilities.** A husband, whether married in this State or in some other jurisdiction, and residing in this, shall be bound to maintain, provide for, and support his wife during marriage, in the same style and manner in which he supports himself; and shall be liable for all debts contracted by his wife for necessities for herself or family during marriage."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 192

S. B. NO. 1424-72

A Bill for an Act Relating to Minimum Age Requirements for Marriage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 572, Hawaii Revised Statutes, is amended in the following respects:

1. By amending section 572-1 to read as follows:

"**Sec. 572-1 Requisites of valid marriage contract.** In order to make valid the marriage contract, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as the whole blood, uncle and niece, aunt and nephew, whether the relationship is legitimate or illegitimate;

*Edited accordingly.

- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age;
- (3) The man does not at the time have any lawful wife living and that the woman does not at the time have any lawful husband living;
- (4) Neither of the parties is impotent or physically incapable of entering into the marriage state;
- (5) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (6) Neither of the parties is a person affected with leprosy or afflicted with any loathsome disease concealed from, and unknown to, the other party; and
- (7) It shall in no case be lawful for any persons to marry in the State without a license for that purpose duly obtained from the agent appointed to grant marriage licenses;

provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2. The marriage ceremony shall be performed only in the judicial circuit in which the license is issued."

2. By amending section 572-2 to read as follows:

"Sec. 572-2 Consent of parent or guardian. Whenever any person who is under the age of eighteen is to be married, the written consent of his or her parents, or guardian or other person in whose care and custody he or she may be, shall accompany the application for a license to marry. No license shall be issued to any minor who is under the jurisdiction of the family court without the written consent of a judge of such court."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 193

S. B. NO. 1435-72

A Bill for an Act Relating to a Central Repository for Studies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. -Studies; submittal to central repository. Prior to the initiation of a study to be done by or for, or financed by the State or one of its political subdivisions, or any agency thereof, each department or agency of the State and its political subdivisions shall, at least 10 days in advance of contractual

*Edited accordingly.

agreement, submit a report to the State archivist in the form prescribed by the archivist which shall contain:

- (1) The full name and address of the firm preparing the study;
- (2) The purpose of the study; and
- (3) Such other information as the archivist may require. A finalized copy of the study shall, upon completion, be submitted to the State archivist for deposit in a central repository to be located in that office. The archives shall maintain a complete and current index of all studies so deposited. A finalized copy of the study shall also, upon completion, be submitted to the legislative reference bureau and the legislative auditor."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 194

S. B. NO. 1472-72

A Bill for an Act Relating to Property Exempt from Levy and Sale on Execution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 651-65, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 651-65 Certain real property. Real property consisting of one piece of land not to exceed one acre, and the dwelling house and other buildings thereon situated, where the owner resides, shall be exempt from levy and sale on execution as follows:

- (1) Such property of a value not exceeding \$20,000 owned by any head of a family or any person sixty-five years of age or older;
- (2) Such property of a value not exceeding \$10,000 owned by any other person.

The values specified in this section shall be determined solely by the assessed value for taxation purposes. An exemption authorized under this section shall not apply to claims of mechanics and materialmen for labor performed and material furnished in the creation, alteration, or repair of such buildings.

Any claim of exemption under this section made before the effective date of this section shall be deemed to be amended on the effective date of this section by increasing the value of any property declared exempt to the value permitted by this section on the effective date of this section to the extent that such increase does not impair or defeat the right of any creditor to execute upon the property which existed before the effective date of this section."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

*Edited accordingly.

A Bill for an Act Relating to Motor Vehicle Industry Licensing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 437-28(b) (22) (E), Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

A Bill for an Act Relating to the Licensing of Electricians and Plumbers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 448E, Hawaii Revised Statutes, is amended by adding a new subsection to section 448E-1 on definitions to read as follows:

"(9) 'Maintenance electrician' means any person who has been licensed by the board as a maintenance electrician to maintain electrical work."

SECTION 2. Hawaii Revised Statutes subsection 448E-4(1) is amended to read as follows:

"Section 448E-4. Powers and duties of Board. The board shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limitation, the following powers:

(1) To grant licenses which shall be renewable on an annual basis to:
 (A) journeyman electricians, (B) journeyman specialty electricians,
 (C) supervising electricians, (D) supervising specialty electricians, (E)
 motion picture operators, (F) master plumbers, (G) journeyman
 plumbers; and (H) maintenance electricians."

SECTION 3. A new subsection 448E-5(8) is added to the Hawaii Revised Statutes as follows:

"(8) Maintenance Electrician. Every applicant to be eligible for the maintenance electrician examination shall be not less than eighteen years of age."

SECTION 4. Hawaii Revised Statutes section 448E-11 is amended to read as follows:

"Sec. 448E-11 Injunction. The board may, in addition to any other remedy available, apply to a circuit court judge for a temporary restraining order, preliminary or permanent injunction restraining any person from acting, or assuming to act, as a journeyman electrician, journeyman specialty electrician, supervising electrician, supervising specialty electrician, maintenance electrician, motion picture operator, journeyman plumber, or master plumber without a license previously obtained in compliance with this chapter and the rules and regulations of the board, and upon hearing and for cause shown, the judge may grant the temporary restraining order, preliminary or permanent injunction."

SECTION 5. Hawaii Revised Statutes is amended by adding a new section 448E-14 to read as follows:

"Sec. 448E-14. County licenses. Any individual holding a current and valid electrician, plumber, or motion picture operator's license under an ordinance of any county of the State prior to January 1, 1972 may continue to practice his trade, and his license shall not be revoked, except for cause; provided that upon the renewal date of any licensee's county license, he shall make application to the board created by this chapter to renew his license; and provided further, that any individual or licensee holding a county license shall be subject to the jurisdiction of the board after January 1, 1972."

SECTION 6. Section 448E-13 Hawaii Revised Statutes is amended to read as follows:

"Section 448E-13. Exemption of public utility and community antennae television company employees. All employees of a public utility within the State under a franchise or charter granted by the State which is regulated by the public utilities commission and community antennae television company while so employed, shall be exempt from the provisions of this chapter."

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 3, 1972.)

ACT 197

H. B. NO. 2522-72

A Bill for an Act Relating to Planning and Development of North Kohala.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and Declaration of Necessity. The Legislature finds and declares that: (a) a serious economic situation threatens the North Kohala area; (b) a Kohala Task Force has proposed several potentially viable industries for the area such as: a feed grain mill, modular home construction, lightweight concrete construction material, tropical fruit processing, generation of electric power, meat packing, slaughterhouse, feed lot, swine production, and aquaculture; and (c) feasibility studies should be conducted to determine the technical and economic feasibility of these and other potentially viable industries.

SECTION 2. There is hereby appropriated out of monies in the treasury received from general obligation bond funds, to be expended by the governor, the sum of \$100,000, or so much thereof as may be necessary, to carry out the feasibility studies cited in Section 1 or any other promising industry.

*Edited accordingly.

SECTION 3. There is hereby appropriated out of monies in the treasury received from general obligation bond funds, to be expended by the governor, the sum of \$3,700,000, or so much thereof as may be necessary, for planning and development of North Kohala.

SECTION 4. There is hereby appropriated out of monies in the treasury received from general obligation bond funds, to be expended by the department of land and natural resources, the sum of \$850,000, or so much thereof as may be necessary, for the development of an irrigation water system in North Kohala.

SECTION 5. The director of finance is authorized to issue general obligation bonds of the State in the amount of \$4,650,000 to be used for the purposes of this Act.

SECTION 6. The authorization in Sections 2 and 3 of this Act shall lapse on June 30, 1973.

SECTION 7. If any portion of this Act or its application to any circumstances is held invalid for any reason, the remainder thereof shall not be affected thereby.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 5, 1972.)

ACT 198

S. B. NO. 1650-72

A Bill for an Act Relating to the Establishment of Day Care Centers for the Elderly.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

"PART IV. SERVICES TO ADULTS

Section 346.81 Purpose. The purpose of this part is to establish the nature and type of services to the elderly, disabled, and aged who are qualified to receive social services according to standards and conditions prescribed by the department of social services and housing.

Section 346.82 Definitions. As used in this part:

- (1) 'Elderly' means any person as may otherwise be defined by the department, who desires and needs counseling, guidance, and assistance to modify or resolve the social, economic, educational, recreational, physical, or mental problem that impedes his personal functioning and well-being.
- (2) 'Day care center for elderly disabled and aged persons' means a place maintained and operated by an individual, organization, or agency for the purpose of providing supportive and protective care to a disabled or aged person with or without charging a fee during the

attendant working day. The term 'day care center' includes place designated for group care for four or more adults or a family home providing care for two or three adults. The term 'disabled and aged persons' refers to persons who live with a spouse, relative, or friend but who require temporary supervision and care during the absence of people from the home or residence.

Nothing in section 346-83 shall be construed to include a relative caring for another relative; a neighbor or friend caring for an adult by mutual choice and agreement; or any center or facility conducted primarily or solely for educational, social, recreational, athletic or other group functions that may provide for twenty-four-hour boarding, personal, or nursing care accommodation.

Section 346-83 Day care centers for disabled and aged persons. The department shall be responsible for the recruitment and licensing of day care centers for the elderly disabled and aged persons. The department shall develop and publish such rules and regulations and minimum standards as are necessary to protect the best interests of adults receiving care in such places. The rules and regulations shall have the force and effect of law and shall be administered by the department.

Section 346-84 Purchase of service. The department is authorized to negotiate the purchase of day care services for the elderly disabled and aged recipients, including other social services from individuals or other organizations, institutions, or agencies. Such other social services must be necessary and essential to maximize the functioning and well-being of the recipient. Purchase of day care center services shall include but not be limited to services that enhance the social functioning of each participant, promote and develop activities in daily living and personal independence by therapeutic arts and crafts, community excursions, hobby cultivation, group dynamics and provisions for counseling to the participants and their families.

Section 346-85 Penalty. Any individual, organization, or agency operating a day care center for disabled or aged persons without a license from the department shall be cited and fined an amount deemed to be appropriate by the court, but not to exceed the maximum of \$5,000."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 5, 1972.)

ACT 199

S. B. NO. 1588-72

A Bill for an Act Relating to Public Broadcasting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to stimulate the growth and development of public broadcasting to enlighten all the citizens of Hawaii by establishing an organization for public broadcasting to be known as the Hawaii public broadcasting authority and a governing body to be known as the board of public broadcasting.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII PUBLIC BROADCASTING AUTHORITY**

Sec. -1 Authority established; purpose. There is hereby established the ‘Hawaii public broadcasting authority’. The authority shall be under the control of the board described in section -2 and be placed within the department of regulatory agencies for administrative purposes.

The purpose of the authority is to establish, manage, control and operate public broadcasting facilities, to produce or otherwise obtain for broadcast, programs intended to enlighten the people of the State, and to air such programs to the citizens of Hawaii.

Sec. -2 Board; composition; appointment; removal. There is hereby established the board of public broadcasting of eleven members.

All members shall be appointed by the governor as provided in section 26-34. The composition of the board shall reflect the distribution of the State population, with consideration for the varied community needs and interests in public broadcasting; provided, that there shall be at least one member from each of the counties of the State. One member of the board may be a representative of the commercial broadcasting industry. In addition to the appointed members the superintendent of education and the president of the university of Hawaii shall serve as ex officio, non-voting members of the board.

Any member of the board who is absent without cause for two consecutive meetings shall be removed by the governor.

Sec. -3 Term; vacancy. Members of the board shall serve for terms of six years and until their successors have been appointed and qualified. Of the members originally appointed, four shall be appointed for a term of two years, four for four years, and three for six years.

A member shall not serve for more than two consecutive terms.

Sec. -4 Compensation; expenses. All members shall serve without compensation but shall be reimbursed for travel and other expenses incurred in the performance of their duties.

Sec. -5 Chairman. The board shall select a chairman from its appointed members annually, who shall serve no more than two consecutive years as chairman.

Sec. -6 Meeting; notice, records and minutes. There shall be at least one meeting of the board every three months. The chairman may call a meeting of the board at any time by giving at least seven days’ written notice of the time and place of the meeting to all other members.

Any six appointed members may call a meeting of the board by giving at least ten days’ written notice of the time and place of the meeting to all other members.

A meeting of the board may be called at any time without notice if all appointed members agree.

The board shall keep records and minutes of all meetings of the board.

Sec. -7 Quorum; voting power; majority; deadlock. Six members shall constitute a quorum to transact business.

Each appointed member present at a meeting shall have one vote.

Any action taken shall be by a simple majority of the appointed members present at a meeting. If the vote on any matter is deadlocked, every appointed member present shall cast a vote.

Sec. -8 Powers. Except as otherwise provided in this chapter, the board may do all acts necessary to carry out the purposes of the authority, including but not limited to:

- (1) Establishing public broadcasting facilities and governing, controlling and operating each facility.
- (2) Establishing policies for the use of and charges for production services and broadcast facilities, including the use of and charges for air time.
- (3) Establishing policies for the allocation of air time, including the basic allocation of air time between instructional television and public television.
- (4) Applying for, receiving, and holding such authorizations and licenses and assignments and reassignments of channels from the federal communications commission as may be necessary to conduct its operations.
- (5) Establishing and abolishing advisory committees as it deems necessary for technical and program assistance.
- (6) Contracting with program production organizations, individuals, and noncommercial educational television stations within and without the State to produce, or otherwise to procure, programs for use by non-commercial stations within the State.
- (7) Making arrangements, where appropriate, with companies or other agencies and institutions operating suitable interconnection facilities.
- (8) Soliciting and receiving funds from private sources.

Sec. -9 Duties. The board shall do all acts necessary to achieve the purpose of this chapter, including but not limited to:

- (1) Hiring an executive director to function as general manager of all public broadcasting facilities.
- (2) Reviewing and approving all budgets, including operating and capital improvement programs.
- (3) Formulating specific objectives, format and emphasis and program standards for public broadcast programming.
- (4) Determining the character, diversity, quality, and excellence of programming which is released via its licensed facilities.
- (5) Developing, directing, and supervising public television programming.

- (6) Coordinating, when appropriate, the compatibility of equipment and systems acquired and used by other agencies, including but not limited to, the department of education and the university of Hawaii.

Sec. -10 Executive director and staff. The board shall appoint an executive director who shall not be subject to chapters 76 and 77. The board shall, subject to approval of the governor, determine the salary of the executive director which shall not be more than ninety-five per cent of the salary of the director of regulatory agencies.

The executive director shall hire at pleasure, with the approval of the board, such staff as may be necessary to carry out the purposes of this chapter. In determining the salary of each employee hired by the director, he shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department.

Sec. -11. Transfer provisions. Upon the appointment of not less than six members of the board of public broadcasting by the governor as provided in section -2, the board shall assume all responsibilities and functions heretofore performed by the State educational television council and the university of Hawaii board of regents with respect to educational television.

The board, in cooperation with the agencies affected by this chapter, shall submit to the seventh State legislature, twenty days before the regular session of 1973 convenes, (1) such proposals as it may deem necessary or desirable to effect the transfer of real property, personal property and personnel to carry out the purposes of this chapter, (2) a budget for the next fiscal biennium and program and financial plans as prescribed by chapter 37, (3) a compensation plan for its employees, and (4) such other related matters as it may determine should properly be considered by the legislature at said regular session.

Pending the approval by the legislature of the transfer of real property, personal property and personnel to carry out the purposes of this chapter, all employees of the university of Hawaii division of educational television shall be temporarily assigned to the authority, and the university of Hawaii shall continue to be responsible for expenditures for personnel, property, facilities, equipment, and all other costs relating to the management, operation, and maintenance of the educational television network as authorized by appropriations of the legislature.

Sec. -12 Annual report. The board shall submit an annual report, including a full disclosure of the objectives, accomplishments, policies, financial condition, and recommendations of the authority, to the governor and the legislature by December 31 for the preceding fiscal year.

Sec. -13 Revolving fund. There is established in the State treasury a fund to be known as the public broadcasting revolving fund which shall be utilized for the purpose of receiving and expending funds derived from private sources for services and airtime, and State funds specifically appropriated for deposit into the public broadcasting revolving fund."

SECTION 3. This Act, upon its approval, shall be effective July 1, 1972. The members of the State educational television council shall continue to per-

form public broadcasting functions as provided by law prior to the passage of this Act until such time that the governor has appointed a majority of the members of the board of public broadcasting as provided in section -2 of the new chapter established herein.

(Approved June 5, 1972.)

ACT 200

H. B. NO. 1893-72

A Bill for an Act Relating to Real Property Tax Exemptions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 246-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 246-23 Claims for certain exemptions. (a) None of the exemptions from taxation granted in sections 246-26 and 246-29 to 246-33 shall be allowed in any case, unless the claimant shall have filed with the department of taxation, on or before June 30 preceding the tax year for which such exemption is claimed, a claim for exemption in such form as shall be prescribed by the department.

(b) A claim for exemption once allowed shall have continuing effect until:

(1) The exemption is disallowed;

(2) The assessor voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided by either section 246-43 or section 246-40, as the case may be) that the claim or claims on file will be voided on a certain date, not less than thirty days after such notice;

(3) The five-year period for exemption, as allowed in section 246-33, expires; or

(4) The claimant makes the report required by subsection (d).

(c) A claimant may file a claim for exemption even though there is on file and in effect a claim covering the same premises, or a claim previously filed and disallowed or otherwise voided. However, no such claim shall be filed if it is identical with one already on file and having continuing effect. The report required by subsection (d) may be accompanied by or combined with a new claim.

(d) Any person who has been allowed an exemption under sections 246-26 or 246-29 to 246-33 has a duty to report to the assessor within thirty days after he ceases to qualify for such an exemption for one of, but not limited to, the following reasons:

(1) He ceases to be the owner, lessee, or purchaser of the exempt premises.

(2) A change in the facts previously reported has occurred concerning the occupation, use, or renting of the premises, buildings or other improvements thereon; or

(3) Some other change in status has occurred which affects his exemption.

Such reports shall have the effect of voiding the claim for exemption previously filed, as provided in subsection (b) (4). The report shall be sufficient if it identifies the property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.

In the event the property comes into the hands of a fiduciary who is answerable under sections 246-7 and 246-41, the fiduciary shall make the report required by this subsection within thirty days after his assumption of his fiduciary duties or within the time otherwise required, whichever is later.

Any person who has a duty of making a report as required by this subsection, who within the time required fails to make a report, shall be liable for a civil penalty. The amount of the penalty shall be \$100 or the amount of the taxes on the property computed without the claim for exemption as of July 1 of the year in which the report was due, whichever is lesser. The penalty shall be recovered in accordance with section 231-33. In addition to this penalty, the taxes due on the property plus any additional penalties and interest thereon shall be collected as property taxes and shall be a lien on the property in accordance with section 246-55.

(e) If the assessor is of the view that, for any tax year, the exemption should not be allowed, in whole or in part, he may at any time within five years of July 1 of that year disallow the exemption for that year, in whole or in part, and may add to the assessment list for that year the amount of value involved, in the manner provided by section 246-51 for the assessment of omitted property; provided, that if an assessment or addition under this subsection is made after September 25 of the tax year, the taxes on the amount of value involved in the assessment or addition so made shall not be a lien under section 246-55 but may be made a lien as provided for in section 231-33 by recording a certificate setting forth the amount of tax involved, penalties, and interest.

(f) In any case of recordation of a certificate for the amount of the civil penalty under subsection (d), or for the amount of tax, penalties, and interest assessed or added under subsection (e), a person shall be deemed to have an interest arising before the recordation of the certificate only if and to the extent that he acquired his interest in good faith and for a valuable consideration without notice of a violation of the requirements of subsection (d) having occurred."

SECTION 2. Section 246-26(d), Hawaii Revised Statutes, is amended to read as follows:

"(d) A taxpayer who is sixty years of age or over and who qualifies under subsection 246-26(a) shall be entitled to one of the following multiples of home exemption:

Age of Taxpayer	Multiple to be Used in Computing Home Exemption
60 years of age or over but not 70 years of age or over	2.0
70 years of age or over	2.5

For the purpose of this subsection, a husband and wife who own property jointly on which a home exemption under the provisions of subsection (a)

has been granted shall be entitled to the applicable multiple of home exemption set forth above when at least one of the spouses qualifies each year for the applicable multiple of home exemption.

SECTION 3. Section 246-32(a), Hawaii Revised Statutes, is amended to read as follows:

“(a) There shall be exempt from real property taxes real property designated in subsection (b) or (c) and meeting the requirements stated therein, actually and (except as otherwise specifically provided) exclusively used for nonprofit purposes. If an exemption is claimed under one of these subsections (b) or (c), an exemption for the same property may not also be claimed under the other of these subsections.

SECTION 4. Section 246-28, Hawaii Revised Statutes, is hereby repealed.

SECTION 5. Section 231-23(a), Hawaii Revised Statutes, as amended, is further amended to read as follows:

“**Sec. 231-23 Adjustments and refunds.** (a) This subsection shall apply to taxes assessed and collected under chapter 246.

- (1) In the event of adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors, and errors in calculations, the adjustments may be entered upon the records although the full amount appearing on the records prior to such adjustment has been paid.
- (2) There may be refunded in the manner provided in subsection (d) of this section any amount collected in excess of the amount appearing on the records as adjusted, or any amount constituting a duplication of payment in whole or in part.
- (3) Whenever any real property is deemed by the director of taxation to be exempt from taxation under section 246-39, if there shall have been paid prior to the effective date of the exemption any real property taxes applicable to the period following the effective date of the exemption, there shall be refunded to the nonprofit or limited distribution mortgagor owning the property in the manner provided in section 231-23(d) all amounts representing the real property taxes which have been paid on account of the property and attributable to the period following the effective date of the exemption.”

SECTION 6. Section 246-39, Hawaii Revised Statutes, as amended, is further amended to read as follows:

“**Sec. 246-39 Exemption for low and moderate-income housing.** (a) For the purposes of this section, ‘nonprofit or limited distribution mortgagor’ means a mortgagor who qualifies for and obtains mortgage insurance under sections 202, 221(d) (3), or 236 of the National Housing Act as a nonprofit or limited distribution mortgagor.

(b) Real property used for a housing project which is owned and operated by a nonprofit or limited distribution mortgagor or which is owned and operated by a person, corporation or association regulated by federal or State

laws or by a political subdivision of the State or agency thereof as to rents, charges, profits, dividends, development costs and methods of operation, shall be exempt from property taxes.

(c) Exemptions claimed under this section shall disqualify the same property from receiving an exemption under section 53-38.

(d) The director of taxation shall, pursuant to chapter 91, promulgate rules and regulations necessary to administer this section."

SECTION 7. Section 246-39.1, Hawaii Revised Statutes, as amended, is further amended to read as follows:

"Sec. 246-39.1 Claim for exemption. (a) Notwithstanding any provision in this chapter to the contrary, any real property exempt from property taxes under section 246-39 shall be exempt from property taxes from the date the property is qualified for the exemption; provided that a claim for exemption is filed with the assessor within sixty days of the qualification. As used herein, the date of the qualification shall be the date when the mortgage made by a nonprofit or limited distribution mortgagor and insured under sections 202, 221(d) (3), or 236 of the National Housing Act is filed for recording with the registrar of the bureau of conveyances or the assistant registrar of the land court of the State, whichever is applicable; provided that in the case of a mortgage made by a nonprofit or limited distribution mortgagor and filed or recorded with the registrar of the bureau of conveyances or the assistant registrar of the land court of the State prior to the effective date of this Act, the date of qualification shall be the effective date of this Act.

(b) After the initial year of the qualification, the claim for exemption shall be filed in the manner provided by applicable law or rule or regulation.

(c) In the event property taxes have been paid to the State in advance for real property subsequently becoming qualified for the exemption, the director of taxation shall refund to the nonprofit or limited distribution mortgagor owning the property that portion of the taxes attributable to and paid for the period after the qualification."

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 9. This Act shall take effect July 1, 1972.

(Approved June 5, 1972.)

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 46- Improvement districts, initiation by the State. Notwithstanding any provision of law to the contrary, the respective legislative bodies of the counties may, upon the petition of the state department of transportation, create, define and establish improvement districts according to applicable assessment statutes or ordinances, for any betterment or improvement proposed by the state department of transportation. The petition of the department of transportation shall include the necessary surveys, maps, plans and other data for the betterment or improvement. Upon approval of the petition by the legislative body of the county, the county shall proceed in the same manner as though the plan for the proposed construction or improvement had been initiated by the legislative body of the county on its own motion, provided that the county may abandon the proceedings prior to adoption of the resolution creating the improvement district.

The provisions of the assessment statutes or ordinances shall be applicable to the proposed construction or improvement insofar as practicable, provided that the costs thereof shall be assessed against the land specially benefited either on a frontage basis, according to area of the land within the improvement district, or on the basis of assessed valuation for real property tax purposes, or any combination thereof.

The state department of transportation shall assume, except for the cost to be borne by the board of water supply of the county, the cost of construction or improvement which would have been assumed by the county had the project been initiated by the county, including the costs and incidentals necessary to process the project, and the costs allocable to state land and land exempted by the improvement district statutes from the payment of improvement assessments; provided that where lands owned by the county, including the board of water supply of the county, form part of the improvement district, the county or the board of water supply of the county, whichever is applicable, shall pay the costs allocable to such lands. Nothing contained herein however, shall be construed to prohibit any county from participating in the costs of an improvement district which is initiated upon petition by the department of transportation.

Upon filing the petition for the creation of an improvement district, the department of transportation shall deposit with the county an amount adequate to cover the administrative costs of the county. In addition, the department of transportation shall from time to time upon request of the county deposit the necessary sums to cover the costs of acquiring land required for the project. Upon award of any contract, either for the entire project or separately for the different kinds of work to be performed, the department of transportation shall deposit with the county the amount the State is obliged to pay towards the contract price; provided that, if the completion of the contract will extend beyond the fiscal year in which the contract is executed, the department of transportation may deposit with the county, if the contract is to be completed during the next succeeding fiscal year, at least fifty per cent or, if the contract by its terms will not be completed until beyond the next succeeding

ACT 202

fiscal year, at least thirty-three and one third per cent of the amount the State is obliged to pay toward the contract price."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 19, 1972.)

ACT 202

H. B. NO. 1636-72

A Bill for an Act Amending Appropriations for the Fiscal Biennium July 1, 1971 to June 30, 1973, and Authorizing the Issuance of Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 1972.

SECTION 2. This Act amends Act 68, Session Laws of Hawaii, 1971.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. The appropriations and authorizations, as the case may be, set forth opposite the cost categories in section 3, Act 68, Session Laws of Hawaii, 1971, for the following programs, are amended to read as follows:

	Exp. Agy.	FY 1971-1972	FY 1972-1973	Total Biennium FY 1971-1973
ECOLOGY, ENVIRONMENT AND RECREATION				
POLLUTION PREVENTION AND CONTROL				
Community Noise Control				
Operating	HTH	(7) 84,292	(7) 129,932	214,224
Provided, that the sum of \$50,000 shall be expended to provide for a statewide network of noise control standards with sufficient capabilities to develop a sound and forceful noise control program. The sum appropriated may be expended for contractual services.				
Sanitation				
Operating	HTH	(62) 778,582	(62) 767,340	1,545,922
Investment: capital	HTH	3,000,000(g)	42,394,000(g) (31,604,000(f))	45,394,000(g) (31,604,000(f))
Flood Prevention and Control				
Operating	LNR	(3) 51,562	(3) 52,052	103,614
Investment: capital	LNR	650,000(g)	910,000(g)	1,560,000(g)
	LNR	800,000(c)	835,000(c)	1,635,000(c)
	LNR	1,150,000(f)	3,495,000(f)	4,645,000(f)

OUTDOOR RECREATION

State Park

		(85.5)	(86.5)	
Operating	LNR	844,922	813,043	1,657,965
Investment: capital	LNR	3,455,000(g)	2,345,000(g)	5,800,000(g)
	COM	50,000(c)	50,000(c)	100,000(c)

ECONOMIC DEVELOPMENT

AGRICULTURE

Marketing and Consumer Services

Commodities

		(27)	(27)	
Operating	AGR	407,945	413,347	821,292
	AGR	6,500(x)	6,800(x)	13,300(x)
	AGR	17,829(f)	17,829(f)	35,658(f)

Provided, that the sum of \$6,800 provided for fiscal year 1972-1973 for Kona coffee inspection shall be contingent on industry meeting not less than twenty per cent of the total inspectional cost through the assessment of appropriate coffee inspection fees.

ANIMAL INDUSTRY

Livestock Disease Control

		(9)	(9)	
Operating	AGR	207,202	208,892	416,094
Investment: capital	AGS	751,000(g)	550,000(g)	1,301,000(g)

Plant Industry

Entomology

		(17)	(18)	
Operating	AGR	217,165	270,375	487,540
	AGR	6,000(f)	6,000(f)	12,000(f)

Provided, that the sum of \$25,000 shall be used for the establishment of a system of control of pestiferous wildlife in the State to protect grain crops. Except that those birds endemic to Hawaii shall be protected.

Agricultural Loans

Plant Quarantine Inspection

		(34.75)	(34.75)	
Operating	AGR	402,826	408,483	811,309
Investment: capital	AGS	23,000(g)	174,000(g)	197,000(g)

Weed, Seed and Herbicide

		(5.25)	(5.25)	
Operating	AGR	128,517	126,475	254,992
Investment: capital	AGS	—	80,000(g)	80,000(g)

Hawaii Agricultural Experiment Station

		(228.59)	(228.59)	
Operating	UOH	3,608,271	3,771,864	7,380,135
		(34.42)	(34.42)	
	UOH	507,277(f)	507,277(f)	1,014,554(f)
Investment: capital	AGS	670,000(g)	—	670,000(g)

Provided, that the sum of \$62,000(4) shall be appropriated for the biennium 1971-1973 to the University of Hawaii Agricultural Experiment Station and Cooperative Extension Service for the purpose of continuing the tissue and forage analyses program for diversified crops.

ACT 202

Provided, further, that the sum of \$30,000 shall be appropriated for the purpose of implementing a research and extension program that will lead to the development of food processing industries within the State based on guava; in addition, the sum may be used to implement research and extension programs for the ornamental industries of Hawaii to include anthuriums, orchid and floral produce industries.

WATER AND LAND DEVELOPMENT

Land Management

		(29)	(29)	
Operating	LNR	346,328	349,084	695,412
Investment: capital	LNR	2,528,000(g)	3,244,000(g)	5,772,000(g)
	DOA		1,000,000(g)	1,000,000(g)

EDUCATION AND CULTURE

LOWER EDUCATION

Language Arts

		(24)	(24)	
Research and Development	EDN	139,180	144,104	283,284
		(2998.5)	(3033.5)	
Operating	EDN	24,198,457	25,926,281	50,124,738
	EDN	12,801,366(f)	12,825,265(f)	25,626,631(f)
	EDN	16,000(s)	16,000(s)	32,000(s)
Investment: non-capital	EDN	1,582,172	318,150	1,900,322
Investment: capital	AGS	7,530,000(g)	4,671,000	12,211,000

Provided, that the sum of \$1,864,022 shall be used to expand the Hawaii English Program.

Subsidies

Hawaii Association for Retarded

Children

Operating	EDN	336,000	361,000	697,000
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Provided, that the sum of \$336,000 for each fiscal year of the biennium 1971-1973 for financial aid to mental retardation associations shall be used on programs for the severely retarded from ages 4 to 20 years allocated on the basis of \$12,000 per class, per 12-month program and distributed quarterly in advance.

Provided, further, that of the additional sum of \$25,000 for fiscal year 1972-1973, \$10,000 thereof shall be expended upon programs for trainable retarded children established in Kona and Kohala, Hawaii; and that \$15,000 thereof shall be expended for the Hilo, Hawaii, training and day activity center program for mentally handicapped children.

HIGHER EDUCATION

Manoa Campus

Instruction

		(1608.39)	(1673.39)	
Operating	UOH	24,108,163	25,705,914	49,814,077
		(5.00)	(5.00)	
	UOH	613,587(f)	618,010(f)	1,213,597(f)
		(11.83)	(11.83)	
	UOH	1,844,956(s)	1,891,408(s)	3,736,364(s)
Investment: capital	AGS	6,546,000(g)	5,134,000(g)	11,680,000(g)
	AGS	—	68,000(f)	68,000(f)

Provided, that if federal funds in the amounts designated under the Morrill-Nelson, Bankhead-Jones Act, Hatch Act, and Smith-Lever Act, are not received, then the difference between the amounts designated and the amounts received is hereby appropriated; provided, further, that if the federal funds received exceeds the amounts designated, then the general fund appropriation shall be reduced by the amount such receipts exceed the sum estimated; provided, further, that for the fiscal year 1971-1972, any reduction due to such excess receipts may be reallocated and expended by the University with the approval of the governor.

Provided, further, that not less than \$91,149(6.0) for 1971-1972 and \$102,327(8.0) for 1972-1973 shall be used for Ethnic Studies.

Academic Support

		(305.40)	(310.40)	
Operating	UOH	5,452,212	5,668,923	11,121,135
Investment: capital	AGS	50,000(g)	2,180,000(g)	2,230,000(g)

Leeward Community College

Instruction

		(150.0)	(164.0)	
Operating	UOH	2,009,282	2,325,668	4,334,950
	UOH	40,000(f)	40,000(f)	80,00(f)
Investment: capital	AGS	1,162,000(g)	1,220,000(g)	2,382,000(g)

Provided, that the sum of \$50,000 and 3.00 positions shall be used to implement an instructional food service program.

Provided, further, that if an instructional food service program is not implemented beginning Fall Semester of 1972, then the sum of \$50,000 shall be deposited into the food service special fund account to provide for working capital of a cafeteria operation.

Kauai Community College

Instruction

		(26.0)	(31.0)	
Operating	UOH	365,172	437,352	802,524
	UOH	6,000(s)	6,000(s)	12,000(s)
	UOH	30,000(f)	30,000(f)	60,000(f)
Investment: capital	AGS	85,000(g)	1,050,000(g)	1,135,000(g)

Provided, that the additional sum of \$15,000 for the fiscal year 1972-1973 shall be used to retain the services of a director of licensed practical nursing program for the continuation of the practical nursing program.

Community Colleges Governance

General Administration

		(22.0)	(25.00)	
Operating	UOH	436,690	508,498	945,188

Provided, that the sum of \$65,000 shall be expended for programs relating to Pacific and Asian Affairs Studies in conjunction with the Pacific and Asian Affairs Council.

Provided, further, that the Pacific and Asian Affairs Studies program, shall be accessible to secondary school students.

Vocational Education Administration

		(9.0)	(9.0)	
	UOH	176,633	228,643	405,275
	UOH	55,000(f)	55,000(f)	110,000(f)

Provided, that the sum of \$50,000 shall be expended for a Young Farmer Program.

Provided, further, that the University may contract with the department of education for the necessary services to carry out the purpose of the Young Farmer Program.

CONTINUING EDUCATION

Instruction

General Studies (College of Continuing Education & Community Service)

		(22.0)	(22.0)	(22.0)
Operating	UOH	424,387	455,443	879,830

		(7.0)	(7.0)	
UOH	162,120(f)		167,936(f)	330,056(f)
	(26.0)		(26.0)	
UOH	1,022,389(s)		1,038,637(s)	2,061,026(s)

Provided, that the sum of \$15,000 shall be expended for continuing education for women programs in the community colleges.

Public Service

Hawaii ETV Network

		(31.0)	(31.0)	
Operating	UOH	719,434	712,075	1,431,509
Investment: capital	AGS	934,000(g)	251,000(g)	1,185,000(g)

Provided, that the additional appropriation of \$65,000 for fiscal year 1971-1972 shall be expended to continue the production of the educational television series on labor entitled "Rice and Roses" and that the sum appropriated shall supplement or match federal funds; provided, further, that such funds shall be placed in a special trust fund to be expended by the Educational Television Network and that such funds may be expended upon the approval of this Act.

Provided, further, that the sum of \$40,000 for fiscal year 1972-1973 shall be expended for the production and filming of a historic pageant, "The Fiftieth Star" and that the film be offered for sale or lease to other private or public television networks and such receipts be deposited into a special or revolving account as the case may be.

PROMOTION OF CULTURE AND THE ARTS

State Foundation on Culture and the Arts

		(4)	(4)	
Operating	BUF	153,765	239,876	393,641

Provided, that the sums of \$23,000 and \$35,000 shall be expended for the Hawaii Youth Symphony and Honolulu Theatre for Youth respectively and that the sums appropriated may be expended to underwrite neighbor island tours.

Provided, further, that the sum of \$50,000 shall be expended for the Honolulu Symphony Society.

GOVERNMENT DIRECTION AND SUPPORT SERVICES

ACCOUNTING AND GENERAL SERVICES

Accounting

Public Works Administration

		(22)	(22)	
Operating	AGS	279,100	280,874	559,974
Investment: capital	AGS	1,596,700(g)	2,714,500(g)	4,311,200(g)

CENTRAL GOVERNMENT OPERATIONS

Automotive Management

Parking Control

		(11.0)	(11.0)	
Operating	AGS	220,498(x)	221,877	442,375(x)
Investment: capital	AGS	1,606,000(g)	233,000(g)	1,839,000(g)
	AGS	—	2,597,000(r)	2,597,000(r)

Executive Direction and Support

Governor's Office

		(24)	(24)	
Operating	Gov.	672,728	831,212	1,503,940
Investment: capital	Gov.	—	250,000(g)	250,000(g)

Provided, that the appropriation for the governor's office shall be expended at the discretion of the governor.

Provided, further, that the Governor is responsible for the effective coordination of the various federal programs and for the acquisition of available federal grants which will be of benefit to the state. In carrying out this function, maximum use should be made of congressional delegations and their staffs.

Provided, further, that the sum of \$20,000 appropriated for the Commission on Marine Science, Engineering and Resources may be used to supply supplemental staff assistance to Hawaii's member on the Commission on Marine Science, Engineering and Resources with the understanding that all or a substantial part of the amount will be matched by private funds. The basic purpose of such staff will be to identify and develop oceanographic research and development opportunities for the state, including programs or grants available to the University of Hawaii and other public or private agencies eligible under Public Law 89-688 and related legislation. Provided, further, that such amount and balance of said appropriation not needed for the Commission on Marine Science, Engineering and Resources may be expended by the Governor for the coordination of oceanographic research, recreation and development.

Provided, further, that of the additional sum appropriated, \$100,000 shall be for the development of an urban quality growth policy for the State of Hawaii; \$50,000 for the further development of a population dispersion and growth policy; \$50,000 for development of modes of transportation policies; and \$50,000 to provide for attorneys for those judicial districts in the State that are determined to be in need of subsidized resident attorneys.

Provided, further, that the Governor may appoint such advisory committees as necessary to effectuate the purposes for the additional appropriations for development of an urban quality growth policy for the State of Hawaii: development of a population dispersion and growth policy; and development of modes of transportation policies.

Provided, further, that the additional appropriations for development of an urban quality growth policy for the State of Hawaii; development of a population dispersion and growth policy; and development of modes of transportation policies; may be expended for personnel on a contractual basis; contractual services; and any cost to be incurred by the advisory committees and personnel on a contractual basis.

Lt. Governor's Office

		(7)	(7)	
Operating	L&G	153,881	260,878	414,759

Provided, that the appropriation for the Lieutenant Governor's Office shall be expended at the discretion of the lieutenant governor.

Provided, further, that the sum of \$103,000 shall be expended for the purposes of the Legislative Reapportionment Commission and the Advisory Council to the Commission.

LEGISLATIVE SUPPORT

Legislative Reference Bureau

		(21)	(21)	
Operating	UOH	522,477	492,990	1,015,467

Provided, that the sum of \$80,000 or so much thereof as may be necessary appropriated in fiscal year 1971-1972, shall be used to conduct a study on the education of children with learning disabilities. Provided further, that the Legislative Reference Bureau may hire persons on contract, without regard to chapters 76 and 77, Hawaii Revised Statutes, to provide aid in typing and other preparation of reports, bills and resolutions.

Provided, further that the sum of \$10,000 shall be expended for a study of law and public policy related to populations in Hawaii.

Provided, further, that the sum of \$10,000 shall be expended to survey the existing services and the needs of the community and to develop alternate systems of day care for children. The sum appropriated may be used for matching federal funds on a contractual basis with the Department of Social Services and Housing.

Provided, further, that the sum of \$10,000 shall be expended for a feasibility study of establishing a comprehensive service agency for Hawaii's senior citizens.

Statute Revision

		(5)	(5)	
Operating	JUD	152,194	145,262	297,456

Provided, that the sum of \$17,820 shall be expended for the printing of the Hawaii Penal Code and that the sum appropriated shall not lapse; provided further that such sum may be expended upon the approval of this Act.

HEALTH

MENTAL RETARDATION

Subsidized Projects

Hale Hauoli—Adult Day Treatment
Center—(Maui Association to Help
Retarded Children)

Operating	HTH	32,006	40,738	72,744
	HTH	8,305(f)	5,750(f)	14,055(f)
	HTH	300(p)	300(p)	600(p)

SUBSIDIES TO PRIVATE HOSPITALS

Molokai General Hospital

Operating	HTH	170,000	140,000	310,000
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Provided, that the appropriation of \$60,000 shall be used to supplement prior appropriations.

GENERAL SUPPORT

Departmental (HTH) Administration

		(41)	(41)	
Operating	HTH	750,971	717,231	1,468,202
		(5)	(5)	
		42,183(f)	42,579(f)	84,762(f)
Investment: capital	AGS	397,100(g)	24,300(g)	421,400(g)

Provided, that the sum of \$50,000 shall be expended for the operations of the Waikiki Drug Clinic.

HUMAN RESOURCES

Employment and Labor Productivity

Employability Development and Training

Manpower Development

		(3)	(3)	
Operating	LBR	347,146	372,050	719,196

Provided, that of the sums appropriated, \$50,000 in each year shall be used to develop and operate joint nursery schools.

Provided, further, that the additional sum appropriated of \$25,000 shall be expended for the Hawaii Employees Recruiting and Training Services to establish and develop a training program for the garment industry.

SOCIAL WELFARE

Family and Children Casework Services

Day-Care Services

		(2)	(2)	
Operating	SOC	27,303	264,042	291,345
	LBR	—	15,000	15,000
	SOC	20,690(f)	21,329(f)	42,019(f)

Provided, that the sum of \$235,000 be expended by the department of social services and housing on a statewide basis for day care services including, Kalihi-Palama day care, Waianae day care and the Infant Satellite Nursery. The above sums shall be matched by federal funds and any indirect overhead funds derived from these projects by the University of Hawaii shall be expended for the purpose of continuing the University child center.

Provided, further, that the sum of \$15,000 to be expended by the department of labor and industrial relations shall be for the Lahaina day care center.

OFFICE OF ECONOMIC
OPPORTUNITY

Youth Opportunity

Operating	GOV	9,572	59,998	69,570
	GOV	25,000(f)	25,000(f)	50,000(f)

Provided, that the sum of \$50,000 shall be expended through the Hawaii office of economic opportunity to provide for grants-in-aid to youth initiated and operated enterprises and that the sum of \$5,000 thereof may be expended for the development and administration of evaluation techniques and program monitoring.

Subsidized Projects

Hale Hauoli (Hanamaulu Day Activity
Program)

SOC	—	7,402	7,402
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Housing

Rental Development and Assistance

Public Housing

		(223.2)	(227.2)	
Operating	SOC	8,008,836(s)	7,941,841(s)	15,950,677(s)
	SOC		34,289	34,289
Investment: capital	SOC	4,600,000(r)	7,475,000(r)	12,075,000(r)

Provided, that of the general fund appropriation, \$24,289 shall be for repairs, replacement, and installation of transom windows at state housing projects—Palolo, Honolulu.

Provided, further, that of the general fund appropriation, \$10,000 shall be for the development of recreational programs for public housing children.

AID TO PERSONS OF HAWAIIAN
DESCENT

Agricultural Development and
Assistance

		(11)	(11)	
Operating	HHL	346,000(s)	346,000(s)	692,000(s)
Investment: capital	HHL	—	430,000(g)	430,000(g)

Residential Development and Assistance

Operating	HHL	384,776(s)	384,776(s)	769,552(s)
Investment: capital	HHL	1,480,000(g)	3,350,000(g)	4,830,000(g)
	HHL	50,000(s)	50,000(s)	100,000(s)

ACT 202

GENERAL SUPPORT

Commission on Aging

		(3)	(3)	
Operating	BUF	198,052	296,700	494,752
	BUF	266,370(f)	270,938(f)	537,308(f)

Provided, that from the sums of \$48,000 for fiscal year 1971-1972 and \$78,000 for fiscal year 1972-1973 appropriated for the Hawaii State Senior Center, the Commission on Aging may expend any necessary amount for contractual services for instructional purposes.

Provided, further, that of the additional sum appropriated, \$25,000 shall be used for contractual services with the Committee on Aging of the County of Kauai to include home services, and health and self-support services.

Provided, further, that of the additional sum appropriated, \$3,000 shall be for purchasing equipment for the Hawaii State Senior Center, Oahu.

Provided, further, that of the additional sum appropriated, \$50,000 shall be used to match \$500,000 of federal funds relating to a statewide nutritional program for the elderly.

HUMAN RIGHTS AND JUSTICE

Regulation of Business Professions and Occupations General Administration

		(17)	(17)	
Operating	REG	259,568	265,788	525,356

Provided, that the sum of \$5,000 shall be used for defraying expenses of the World Boxing Association Convention to be held in Hawaii, August 6-9, 1972.

Insurance

		(13)	(18)	
Operating	REG	150,984	313,355	464,339

Provided, that the additional amount of \$160,000 and 5.0 positions appropriated for fiscal year 1972-1973 shall be expended for the purpose of meeting the additional costs of implementing and administering new legislation relating to automobile insurance.

Public Utilities Commission

		(34)	(34)	
Operating	REG	561,888	549,276	1,111,164

Provided, that the sum of \$5,000 shall be expended by the Public Utilities Commission for per diem expenses.

Regulation of Pest Control

Operating	REG	—	15,000	15,000
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Provided, that the sum of \$15,000 shall be expended by the director of regulatory agencies for the regulation of fumigation operators.

Real Estate Commission

REG	—	15,000	15,000
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Taxi Commission

REG	—	15,000	15,000
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Corrections

Administration

		(6)	(6)	
Operating	SOC	94,624	95,741	190,365
Investment: capital	AGS	—	200,000(g) 398,000(f)	200,000(g) 398,000(f)

TRANSPORTATION

Air (Airports)

Hawaii

		(42)	(42)	
Operating	TRN	609,384(s)	609,132(s)	1,218,516(s)
Investment: capital	TRN	250,000(a)	125,000(a)	375,000(a)
			75,000(f)	75,000(f)

Maui

		(31)	(31)	
Operating	TRN	421,428(s)	420,710(s)	842,138(s)
Investment: capital	TRN	575,000(a)	30,000(a)	605,000(a)
			10,000(s)	10,000(s)

Kauai

		(13)	(13)	
Operating	TRN	208,862(s)	213,590(s)	422,452(s)

Water (Commercial Harbors)

Administration

		(34.5)	(34.5)	
Operating	TRN	4,219,276(s)	4,263,201(s)	8,482,477(s)

Operations, Maintenance and Improvements

Statewide

Investment: capital	TRN	40,000(s)	20,000(s)	60,000(s)
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Oahu

		(139)	(139)	
Operating	TRN	2,711,415(s)	2,502,584(s)	5,213,999(s)
Investment: capital	TRN	5,013,000(a)	1,000,000(a)	6,013,000(a)
	TRN	1,614,000(s)	648,000(s)	2,262,000(s)
	TRN	4,100,000(r)	500,000(r)	4,600,000(r)
	TRN	2,425,000(f)	—	2,425,000(f)

DEPARTMENT OF TRANSPORTATION

Highways

Oahu

		(188)	(188)	
Operating	TRN	2,274,670(s)	2,077,153(s)	4,351,823(s)
Investment: capital	AGS	—	17,700(g)	17,700(g)
	TRN	2,181,000(g)	100,000(g)	2,281,000(g)
	TRN	15,550,000(a)	26,236,000(a)	41,786,000(a)
	TRN	50,814,000(f)	135,567,000(f)	186,381,000(f)

Hawaii

		(108)	(118)	
Operating	TRN	1,462,829(s)	1,626,922(s)	3,089,761(s)
Investment: capital	TRN	2,792,000(g)	7,000,000(g)	9,792,000(g)
	TRN	785,000(a)	1,276,000(a)	2,061,000(a)
	TRN	360,000(f)	868,000(f)	1,228,000(f)

Maui

		(63)	(73)	
Operating	TRN	690,954(s)	971,611(s)	1,662,565(s)
Investment: capital	TRN	745,000(g)	325,000(g)	1,070,000(g)
	TRN	714,000(a)	1,884,000(a)	2,598,000(a)
	TRN	360,000(f)	1,376,000(f)	1,736,000(f)

Kauai

		(42)	(42)	
Operating	TRN	420,275(s)	489,534(s)	909,809(s)
Investment: capital	TRN	885,000(g)	1,150,000(g)	2,035,000(g)
	TRN	2,375,000(a)	1,922,000(a)	4,297,000(a)
	TRN	1,777,000(f)	1,346,000(f)	3,123,000(f)

Highway Safety (coordinator's office)

		(4)	(4)	
Operating	TRN	71,958(s)	47,448(s)	119,406(s)
	TRN	71,958(f)	47,447(f)	119,405(f)

PART III. CAPITAL IMPROVEMENTS PROJECTS

SECTION 4. Section 4, Act 68, Session Laws of Hawaii, 1971, is amended by modifying the scope or expenditure pattern of certain projects enumerated therein and by adding new projects thereto. The Act 68 projects, the scope or expenditure pattern of which is modified, the modifications and the new projects are as follows. Nothing in this section shall affect the continuing effectiveness as provided of those projects enumerated in section 4, Act 68, Session Laws of Hawaii, 1971, but not listed below.

A. ECOLOGY, ENVIRONMENT AND RECREATION**POLLUTION, PREVENTION AND CONTROL****Environmental Health****Sanitation**

1. Department of Health, Sewerage Construction Grants, Statewide—Grants-in-aid to County or State agencies for eligible water pollution control facilities conforming with the State water pollution control plan as authorized under Section 1 of Act 117, SLH 1969. (Funds to be expended by the Department of Health.)

Construction	1,000	40,394	41,394
Total Funding	1,000(g)	40,394(g)	41,394(g)
		(31,604f)	(31,604f)

CONSERVATION**Flood Prevention and Control**

17a. Silt Basins, Statewide—Study on the possibility of creating sediment or silt basins, Statewide Design

Design	—	25	25
Total Funding	—	25(g)	25(g)

Outdoor Recreation

State Parks (To be expended by the Department of Land and Natural Resources)

36a. North Kohala Historic Preservation and Restoration, Hawaii—Research, plans, acquisition, preservation, restoration, development and interpretation of North Kohala's historic places, structures and objects. Federal funds to be solicited and used to offset State funds to extent available

Land	—	100	100
Design	—	40	40
Construction	—	360	360
Total Funding	—	500(g)	500(g)

B. ECONOMIC DEVELOPMENT

AGRICULTURE

Animal Industry

Livestock Disease Control

2a. Feed and Grain Storage Facilities, Statewide

—Planning and construction of feed and grain storage facilities.

Design	—	30	30
Construction	—	270	270
Total Funding	—	300(g)	300(g)

Hawaii Agricultural Experiment Station

6a. Plant Industry Facilities, Maui—Land, plans and construction for replacement of existing plant quarantine and fumigation facility, entomology laboratory and weed control offices.

Land	—	1	1
Design	—	12	12
Construction	—	145	145
Total Funding	—	158(g)	158(g)

6b. Quarantine Insectary, Improvements, Honolulu

—Plans and construction for improvements to existing quarantine insectary facility, including re-roofing and lighting.

Design	—	2	2
Construction	—	14	14
Total Funding	—	16(g)	16(g)

WATER AND LAND DEVELOPMENT

Land Management

13a. Agricultural Park Subdivision, Statewide—

Plans and construction of on- and off-site improvements for development of agricultural lots, including acquisition of land by purchase fee simple or lease. (To be expended by the Dept. of Agriculture.)

Land	—	200	200
Design	—	80	80
Construction	—	720	720
Total Funding	—	1,000(g)	1,000(g)

Water Resources

14a. Molokai Irrigation and Water Utilization Project, Molokai—Reservoirs and distribution system.

Construction	—	600	600
Total Funding	—	600(g)	600(g)

PLANNING AND DEVELOPMENT
ASSISTANCE

Community Development Training

27. Agricultural Park Improvement, Statewide
Eradication of noxious weed (To be expended
by the Department of Agriculture)—The Board
of Agriculture may use its present staff, summer
student help, and such temporary personnel who
shall be exempted from the provisions of Chap-
ters 76 and 77, Hawaii Revised Statutes, and
who are unemployed and duly registered as un-
employed with the Department of Labor and In-
dustrial Relations. The Board may, upon ap-
proval of the Governor, enter into contract for
the necessary equipment, supplies, materials,
labor, professional service and technical assist-
ance to be used in the project.

Construction	—	80	80
Total Funding	—	80(g)	80(g)

C. EDUCATION AND CULTURE

LOWER EDUCATION

Social and Personal Learning

Physical Education

Administration

District/School Administration

22. New Kailua Intermediate School, Oahu—Con-
struct administration building.

Design	—	20	20
Construction	—	249	249
Total Funding	—	269(g)	269(g)

Support

School Lunch

30. New Kailua Intermediate School, Oahu —Con-
struct food preparation area and multi-purpose
dining area.

Design	40	—	40
Construction	60	346	406
Total Funding	100(g)	346(g)	446(g)

46a. Pearl Ridge Elementary School—Planning
and construction of a kitchen-multi-purpose caf-
etorium.

Design	30	—	30
Construction	370	—	370
Total Funding	400(g)	—	400(g)

Multi-Program Capital Investment

58. Pearl Ridge Elementary School, Oahu—Con-
struction of 2nd increment; classrooms with ac-
cess road and parking.

Construction	428	—	428
Total Funding	428(g)	—	428(g)

75. Kailua High (New School)—Construct classrooms, custodial area and sitework.

Design	200	—	—
Construction	1,767	649	2,616
Total Funding	1,967(g)	649(g)	2,616(g)

77. Kaneohe High (New School)—Construct classrooms with teachers' workroom.

Construction	—	1,480	1,480
Total Funding	—	1,480(g)	1,480(g)

79. Mililani Intermediate and High School—Construct classroom buildings.

Construction	723	853	1,576
Total Funding	723(g)	853(g)	1,576(g)

84a. New Kailua Intermediate School, Oahu—Master planning, design of first increment of classrooms and construction of classrooms.

Design	125	—	125
Construction	483	—	483
Total Funding	608(g)	—	608(g)

84b. Headstart Classrooms, Statewide (To be expended by the Office of the Governor)—Plans and construction of portable classrooms.

Plans	—	25	25
Construction	—	225	225
Total Funding	—	250(g)	250(g)

HIGHER EDUCATION

Manoa Campus

Instruction

104a. University of Hawaii Medical School Development, Statewide—Land, plans, construction, and equipment for development of facilities for a medical school, including clinical teaching facilities at community hospitals participating in medical education at Leahi Hospital.

Land	—	212	212
Design	—	234	234
Construction	—	1,354	1,354
Total Funding	—	1,800(g)	1,800(g)

Academic Support

106a. East-West Center Facility, Oahu—Plans for construction.

Design	—	360	360
Total Funding	—	360(g)	360(g)

Kauai Community College

Instruction

137a. Kauai Community College, Kauai—Plans and construction for the incremental development of the new campus. First increment of con-

struction to include site development including grading, roadways, parking, utilities, drainage and landscaping; classrooms; laboratories; special classrooms; administration facilities; library; shop buildings.

Design	—	100	100
Construction	—	950	950
Total Funding	—	1,050(g)	1,050(g)

CONTINUING EDUCATION

Public Service

Hawaii ETV Network

147a. Hawaii ETV Network, Statewide—Purchase and installation of special equipment for added remote capability.

Design	—	25	25
Construction	—	226	226
Total Funding	—	251(g)	251(g)

D. GOVERNMENT DIRECTION AND SUPPORT SERVICE

PUBLIC WORKS

3. State Capitol Complex, Purchase of Capitol Annex Block, Honolulu, Oahu—Purchase of Capitol Annex Block bound by Beretania, Kapiolani Extension, Hotel and Punchbowl Streets.

Land	598	2,475	3,073
Total Funding	598(g)	2,475	3,073

11. Wailuku Civic Center, Additional Parking, Maui—Construction, land acquisition and landscaping on-surface parking to provide State employee and public parking.

Land		94	94
Construction	64	—	64
Total Funding	64(g)	94(g)	158(g)

14. Hilo Civic Center, Parking Facilities, Hilo State Office Building, Hilo, Hawaii—Plans and Construction of parking facilities.

Design	10	—	10
Construction	635	—	635
Total Funding	645(g)	—	645(g)

18. North Kohala Civic Center, Hawaii—Land acquisition, plans and construction for a civic center complex.

Land	30	—	30
Design	—	15	15
Construction	—	160	160
Total Funding	30(g)	175(g)	205(g)

19. Stadium Development, Oahu—Plans and construction of on-site and off-site improvements, including improvement of Salt Lake Boulevard from realigned Halawa Heights Road to Kamehameha Highway. Funds appropriated in Item I-K-59 of Act 197, SLH 1971 which are unencumbered as of June 30, 1972 shall be used for this project.

Design	—	34	34
Construction	—	346	346
Total Funding	—	380(g)	380(g)

20. State Capitol Complex Purchase of block bounded by Miller and Punchbowl Streets and the Vineyard Thoroughfare mauka of the Capitol.

Land	—	860	860
Total Funding	—	860(g)	860(g)

21. State Capitol Complex Armed Forces Memorial Project, Oahu—Land plans and construction of a memorial site in the mall area mauka of the State Capitol.

Design	—	12	12
Construction	—	113	113
Total Funding	—	125(g)	125(g)

F. HUMAN RESOURCES

AID TO PERSONS OF HAWAIIAN DESCENT

Residential Development and Assistance

8a. Hawaiian Homes—Commercial loan fund, Statewide—Commercial loans for theaters, garages, service stations, markets, stores, and other mercantile establishments.

Construction	—	250	250
Total Funding	—	250(g)	250(g)

Agricultural Development and Assistance

9a. Hawaiian Home—Farm Loan Fund, Statewide—Farm loans as provided for in section 214, Hawaiian Homes Commission Act of 1920, as amended.

Construction	—	250	250
Total Funding	—	250(g)	250(g)

G. HUMAN RIGHTS AND JUSTICE

CRIME PREVENTION AND CONTROL

3a. State Correctional Facilities, Statewide—Plans for facilities conforming with the Hawaii State Correctional Master Plan.

Design	—	598	598
Total Funding	—	200(g) 398(f)	200(g) 398(f)

H. TRANSPORTATION

AIRPORTS

O & M and Improvements (To be expended by the Department of Transportation)

Hawaii

5. Upolu Airport, North Kohala, Hawaii—Resurface runway, acquisition of land for runway clear zones and reconstruction of runway.

Land	0	150	150
Design	20	—	20
Construction	230	—	230
Total Funding	250(a)	75(a)	325(a)
		75(f)	75(f)

5a. Waimea-Kohala Airport, Kamuela, Hawaii—Renovation of existing airline ticket counters and other related terminal improvements.

Design	0	5	5
Construction	0	45	45
Total Funding	0	50(a)	50(a)

Maui

6a. Airport Terminal Improvements, County of Maui—Procurement of new lobby furniture for recently expanded terminal facilities at Lanai and Molokai airports.

Construction	0	10	10
Total Funding	0	10(s)	10(s)

6b. Molokai Airport, Hoolehua, Molokai—Plans and construction of a control tower, counter booths for air taxi operators, and other terminal improvements.

Design	0	3	3
Construction	0	27	27
Total Funding	0	30(a)	30(a)

HARBORS

O & M and Improvements (To be expended by the Department of Transportation)

Oahu

14. Expansion of Container Facilities and Development of Transshipment at Honolulu Harbor, Oahu—Plans and construction for development of transshipment and maritime industrial facilities on Sand Island, including extension of berthing facility and back-up area and other improvements as required.

Design	20	40	60
Construction	0	560	560
Total Funding	20(s)	600(a)	600(a)

HIGHWAYS

O & M and Improvements (To be expended by the Department of Transportation)

39. Interstate Route H-2, Waiawa Interchange towards Schofield Barracks, Oahu—Incremental construction of divided highway (including major crossing structures at Waikakalaua and Kipapa Gulches and interchanges in vicinity of Wahiawa and Mililani Town) from the Waiawa Interchange to Schofield Barracks.

Land	1,368	1,368
Design	1,345	1,345
Construction	20,563	20,563
Total Funding	3,618(a)	3,618(a)
	19,157(f)	19,157(f)

52a. Interstate Route H-1, Halawa Interchange to Palailai Interchange, Oahu—Plans, land acquisition and construction, including safety improvements along Route H-1.

Land	0	4,700	4,700
Design	0	45	45
Construction	0	475	475
Total Funding	0	783(a)	783(a)
		4,437(f)	4,437(f)

Hawaii

53. Hawi-Mahukona Road, North Kohala, Hawaii—Supplement prior appropriation to construct two-lane highway.

Construction	799	822	1,621
Total Funding	439(a)	349(a)	788(a)
	360(f)	473(f)	833(f)

54. Kawaihae-Kailua Road, Hawaii—Incremental construction of two-lane highway. To supplement prior appropriations.

Land	180	—	180
Design	120	50	170
Construction	615	6,590	7,205
Total Funding	915(g)	6,640(g)	7,555(g)

74a. Route 19, Hilo Waterfront Road, Wailoa River Bridge Emergency Repair.

Design	0	5	5
Construction	0	71	71
Total Funding	0	76(a)	76(a)

Maui

79. Honoapiilani Highway, Lahaina, Maui—Construction of a two-lane highway from Honokowai to Honokahua.

Construction	800	1,362	2,162
Total Funding	440(a)	580(a)	1,020(a)
	360(f)	782(f)	1,142(f)

88a. Maui Base Yard, Maui—Plans and construction for a Maui District Base Yard.

Construction	0	426	426
Total Funding	0	426(a)	426(a)

Kauai

102a. Route 56, Kuhio Highway, Repairs to Hanalei Bridge, Kauai—Structural improvements to existing bridge.

Design	0	7	7
Construction	0	115	115
Total Funding	0	122(a)	122(a)

102b. Ahukini-Nawiliwili Cut-Off Road, Kauai—Construction of a two-lane highway, including landscaping, from Ahukini Road to Rice Street.

Construction	0	165	165
Total Funding	0	91(a) 74(f)	91(a) 74(f)

PART IV. ISSUANCE OF BONDS

SECTION 5. Section 5, Act 68, Session Laws of Hawaii, 1971, is amended to read as follows:

"SECTION 5. General Obligation Bonds. General obligation bonds may be issued as provided by law to yield the amount that may be necessary to finance projects included in Part II and listed in Part III of this act and designated to be financed from general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds, provided that the sum total of the general obligation bonds so issued shall not exceed \$299,829,000."

PART V. SPECIAL PROVISIONS

SECTION 6. Section 25, Session Laws of Hawaii, 1971, is amended to read as follows:

"SECTION 25. Any law or any provision of this act to the contrary notwithstanding, the appropriations made for capital investment projects included in Part II and listed in Part III of this act shall not lapse at the end of the fiscal year for which the appropriation is made, provided that all appropriations made to be expended in fiscal year 1971-1972 which are unencumbered as of June 30, 1976, and all appropriations made to be expended in fiscal year 1972-73 which are unencumbered on June 30, 1977 shall lapse as of that date."

**PART VI. OTHER PROVISIONS, SEVERABILITY
AND EFFECTIVE DATE**

SECTION 7. All Educational Assistants, Department Assistants, General Aids, and Follow-up Aides employed in the Department of Education

prior to the effective date of this Act and still so employed shall be accorded all the rights, benefits, and privileges thereto retroactive to the date of their appointment. Such rights and privileges shall include seniority, prior service credit for retirement purposes, vacation and sick leave credit, and each such employee shall become civil service employees without necessity of examination.

SECTION 8. Severability. If any portion of this Act or its application to any person or circumstance is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 10. Effective date. This Act shall take effect upon its approval.

(Approved June 19, 1972.)

ACT 203

H. B. NO. 1879-72

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The following respective sums of money are hereby appropriated out of the general revenues of the State of Hawaii, unless otherwise specified, for the purposes of reimbursing the following persons for overpayment of taxes or on account of other claims against the State in the amounts set out opposite their respective names:

Section 37-76, Hawaii Revised Statutes

REFUND OF TAXES:	Division	Amount
Chun, Henry L. Y. and Gertrude H. K. (Income)	First	\$ 336.00
Schmidtauer, Willi J. (Real Property)	First	211.95
Tanabe, Hideo (Real Property)	First	125.20
Thompson, Lyle W. and Barbara M. (Real Property)	First	299.36
Kukui Mortuary, Ltd. (General Excise)	Third	11,663.61

*Edited accordingly.

ACT 203

Chapter 662, Hawaii Revised Statutes

JUDGMENTS AGAINST THE STATE AND SETTLEMENT OF CLAIMS:

Butzke, John H.	\$13,117.80
Civil No. 30020, 1st Circuit	
Date of Judgment: May 5, 1971	
Amount of Judgment: \$12,500.00	
4% Interest: \$617.80	
Hollingsworth, Clarence A. and Christine E.; Dexter, Anne and A.J.; Putnam, Henry D. and Esther; Golden, Urla M. and Elroy E.; Meyers, Warren E. and Elizabeth; Norwalt, Betty	7,133.47
Civil No. 26325, 1st Circuit Court approved Settlement on February 7, 1972	
Amount: \$7,000.00	
4% Interest: \$133.47	
Juban, Carl	26,107.38
Civil No. 32476, 1st Circuit	
Date of Judgment: January 5, 1972	
Amount of Judgment: \$25,617.00	
4% Interest: \$490.38	
Klibbe, Frank W.	3,008.05
Civil No. 33165, 1st Circuit	
Date of Judgment: August 24, 1971	
Amount of Judgment: \$2,900.00	
4% Interest: \$108.05	
Komura, Gladys	3,082.52
Civil No. 1287, 2nd Circuit	
Date of Judgment: November 22, 1971	
Amount of Judgment: \$3,000.00	
4% Interest: \$82.52	
Rembert, Gayle Marne	5,715.78
Civil No. 32826, 1st Circuit	
Date of Judgment: August 6, 1971	
Amount of Judgment: \$5,500.00	
4% interest: \$215.78	
Rodrigues, Vincent E., Jr. and Adaline	9,357.04
Civil No. 1006, 2nd Circuit	
Date of Judgment: August 2, 1971	
Amount of Judgment: \$9,000.00	
4% Interest: \$357.04	
Upchurch, Robert J.	28,000.00
Civil No. 16184, 1st Circuit	
Date of Judgment: July 29, 1969	
Amount of Judgment: \$25,000.00	
4% Interest: \$3,000.00	

Section 37-76, Hawaii Revised Statutes

MISCELLANEOUS CLAIMS:

Refund of Escheated Accounts

Leone, William	1,480.73
Leong, Wong	92.38

Others

Bickel, Robert	129.88
Damage to car by patient at Hawaii State Hospital on November 17, 1971.	
Hu, Anna M.	161.20
Damage to car by patient at Hawaii State Hospital on July 14, 1971.	
Kataoka, Reginald	757.53
Personal property losses (tools) in burglary at Waimano Training School and Hospital on July 24-25, 1971.	
Kennedy, Julia L.	234.00
Damage to car by patient at Hawaii State Hospital on July 14, 1971.	
Kong, Vernon K.	10.00
Personal damage (wristwatch band) in food cart accident at Hawaii State Hospital on November 6, 1971.	
Lestimado, Zacarias	9.65
Damage to car by patient at Waimano Training School and Hospital on November 19, 1970.	
Low, Amy	72.80
Damage to car by patient at Waimano Training School and Hospital on June 9, 1971.	
Nobriga, A. J.	61,095.18
Services provided by Nobriga Tractor Service on Lands belonging to the Department of Hawaiian Home Lands, County of Hawaii, to be paid out of the Development Fund of the Department of Hawaiian Home Lands.	
Takumi, Muriel	5.62
Damage to car by patient at Waimano Training School and Hospital on November 19, 1970.	
Tamashiro, Roy	93.19
Damage to car by patient at Waimano Training School and Hospital on April 18, 1971.	
Wilberts, Carson E.	36.00
Personal property loss (eyeglasses) during offshore water sampling on March 11, 1971.	
Woolsey, Julia Y.	221.23
Damage to car by patient at Hawaii State Hospital on September 16, 1971.	
Zane, George	543.18
Personal property losses (tools) in burglary at Waimano Training School and Hospital on July 24-25, 1971.	

Meritorious Claim

Vlachos, Peter G.	1,065.00
Loss of car and personal property therein by fire during civil disturbance in Okinawa on December 20, 1970; University of Hawaii professor on overseas assignment.	

SECTION 2. The sums hereinabove appropriated shall be paid upon warrants issued by the comptroller of the State upon vouchers approved by the

director of the State department of taxation in the several amounts and to the respective persons hereinabove set out as to said claims for taxes, and shall be paid upon warrants issued by said comptroller upon vouchers approved by the director of the department of budget and finance as to all other claims.

SECTION 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State and settlements of claims payment of interest, at the rate of four per cent a year, shall be limited to the period from the date of judgment or court approval of the settlement to the effective date of this Act, as provided in section 662-8, and all unexpended balances thereof after payment shall lapse into the general fund of the State.

SECTION 4. If any portion of this Act or its application to any circumstances or person is held invalid for any reason, the remainder thereof shall not be affected thereby.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 19, 1972.)

ACT 204

H. B. NO. 2515-72

A Bill for an Act Relating to Improvements at Waikiki, Oahu.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 197, Item 67 section 2, part I, subsection K, sub-heading Tourism, Session Laws of Hawaii 1971, is amended to read as follows:

"Tourism

(To be expended by the City and County of Honolulu or the State of Hawaii)

67. Waikiki Improvements, Oahu—General improvement planning, project planning, design, engineering, land acquisition and construction of public facilities for the general improvement of the Waikiki area, the boundaries of which are delineated on the Development Plan for the Kalia, Waikiki, and Diamond Head areas (Map designated as portion of 1967 General Plan Development Plan Waikiki-Diamond Head [section A]); provided that the City and County shall initiate action for the creation of an improvement district for Waikiki and adopt special assessment ordinances whereby not less than 33-1/3% nor more than 66-2/3% of the entire cost of such improvements, other than for the development of General Improvement Planning, Project Planning, Design, Engineering, incidentals and inspection, shall be assessed against lands and improvements on the basis of assessed valuation for real property tax purposes, or assessed against land on a frontage basis, or area basis, or any combination thereof; provided further that the governor may expend the sum appropriated herein for planning, design, and engineering or he may transmit such sum to the City and County to be expended for such purposes. Notwithstanding the foregoing, if the governor deems it necessary in the public interest, he may authorize the construction of the Waikiki improvements under any other applicable statute which authorizes the creation of State improvement districts.	9,000,000
	4,000,000(c)

FY 71-72

General Improvement Planning, Project Planning, Design, and Engineering for Proposed Waikiki Improvement District Land and Construction	\$1,000,000 2,000,000 1,000,000(c)
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FY 72-73

Land and Construction	6,000,000 3,000,000(c)
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SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring; provided that the term "[section A]" and the brackets around the term shall not be deleted.*

SECTION 3. This Act shall take effect upon its approval.
(Approved June 19, 1972.)

ACT 205

S. B. NO. 564

A Bill for an Act Relating to the State Antitrust Laws and Providing an Exemption for Certain Combinations and Arrangements Necessary for the Survival of Failing Newspapers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 480, Hawaii Revised Statutes, is amended by adding a new part to be appropriately numbered and to read as follows:

"PART II. ANTITRUST EXEMPTION

Sec. 480- Statement of findings and policy. The legislature finds that:

- (1) There has been an alarming decline in the number of American newspapers to the point where there are fewer than sixty cities with competing dailies as against five hundred fifty-two cities a half-century ago;
- (2) Twenty-two cities have been able to maintain newspaper competition only by virtue of joint operating plans in which a newspaper in dire financial straits merges with its stronger competition, its commercial components (mechanical, advertising, circulation) but withholding its editorial functions;
- (3) The alternative in such cases is to enter into a full merger, with the result of a single ownership of morning and evening papers and of a single editorial policy;
- (4) The joint-plan operation of The Honolulu Advertiser and the Honolulu Star-Bulletin, separately owned and with independent editorial policies and staffs, has given the community that diversity of opinion and commentary which is essential to public awareness and understanding of vital issues; and

*Edited accordingly.

- (5) There has been enacted by the Congress of the United States as an amendment to the federal antitrust laws an act for newspaper preservation providing that a failing newspaper merging its non-editorial functions with its competitor will be permitted under the federal law (Public Law 91-353, 84 Stat. 466).

The legislature declares that it is the public policy of the United States applicable in all parts of the United States, 'to preserve the publication of newspapers in any city, community, or metropolitan area where a joint arrangement has been heretofore entered into because of economic distress or is hereafter effected' in accordance with the provisions of the above referred to Public Law 91-353, 84 Stat. 466, and the public policy of this State is hereby declared to be in conformity with the public policy of the United States.

Sec. 480- Definitions. As used in this part, unless the context otherwise requires:

- (1) 'Antitrust law' means chapter 480 and 481 (part 1) and any other laws in *pari materia*;
- (2) 'Joint newspaper operating arrangement' means any contract, agreement, joint venture, whether or not incorporated, or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution; provided that there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies are independently determined;
- (3) 'Newspaper Owner' means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications;
- (4) 'Newspaper publication' means a publication produced on newsprint paper which is published in one or more issues weekly, including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area, and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion;
- (5) 'Failing newspaper' means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure;
- (6) 'Person' or 'persons' includes individuals, corporations, firms, trusts, partnerships, and incorporated or unincorporated associations, existing under or authorized by the laws of this State or any other state, or any foreign country.

Sec. 480 Preservation of newspapers; exemption from antitrust laws.

Any failing newspaper operation may merge in a joint newspaper operation provided that there shall not be a merger, combination, or amalgamation of the editorial or reportorial staffs. The editorial policies of both newspapers of the joint newspaper operation shall be independently determined.

Sec. 480 Lawful and unlawful practices. (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operation arrangement entered into prior to the effective date of this part, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication. Provided that the terms of a renewal or amendment to a joint operating arrangement must be filed with the department of the attorney general, the amendment shall not add a newspaper publication or newspaper publications to such arrangement.

(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the attorney general. Prior to granting approval, the attorney general shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of the arrangement would effectuate the policy and purpose of this part.

Sec. 480- No exemption of antitrust laws granted; when. Nothing contained in this part shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this part, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

Sec. 480- Violation a misdemeanor. Any person who violates section 480- (b), including any newspaper owner, failing newspaper, or joint newspaper operating arrangement shall be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding one year, or both.

Sec. 480- Severability. If any provision of this part or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provisions or applications, and to this end the provisions of this part are severable."

SECTION 2. This Act shall take effect upon its approval.

Became law June 20, 1972, without Governor's signature pursuant to Art, III, Section 17, of the Hawaii State Constitution.

PROPOSED CONSTITUTIONAL AMENDMENTS

Proposed Constitutional Amendments

S. B. NO. 1408-72

A Bill for an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article I of the Constitution of the State of Hawaii to guarantee that equality of rights under the law shall not be denied or abridged by the State on account of sex and to authorize the legislature to enforce the guarantee.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately numbered and to read as follows:

"Section Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this section."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This amendment shall take effect upon compliance with Article XV, section 3, of the Constitution of the State of Hawaii.

(Passed final reading in the Senate on March 1, 1972, and in the House of Representatives on March 29, 1972.)

S. B. NO. 1947-72

A Bill for an Act Proposing an Amendment to Article VI, Section 5, of the Hawaii Constitution, to Clarify Legislation Needed for a Supplemental Appropriation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article VI, section 5, of the Constitution of the State of Hawaii by specifically referring to a supplemental appropriation bill to be transmitted to the governor in a regular session in an even-numbered year.

SECTION 2. Article VI, section 5, of the Constitution of the State of Hawaii is amended to read as follows:

"Section 5. In each regular session in an odd-numbered year, the legislature shall transmit to the governor an appropriation bill or bills providing for the anticipated total expenditures of the State for the ensuing fiscal biennium. In such session, no appropriation bill, except bills recommended by the governor for immediate passage, or to cover the expenses of the legislature,

*Edited accordingly.

PROPOSED CONSTITUTIONAL AMENDMENTS

shall be passed on final reading until the bill authorizing operating expenditures for the ensuing fiscal biennium, to be known as the general appropriations bill, shall have been transmitted to the governor.

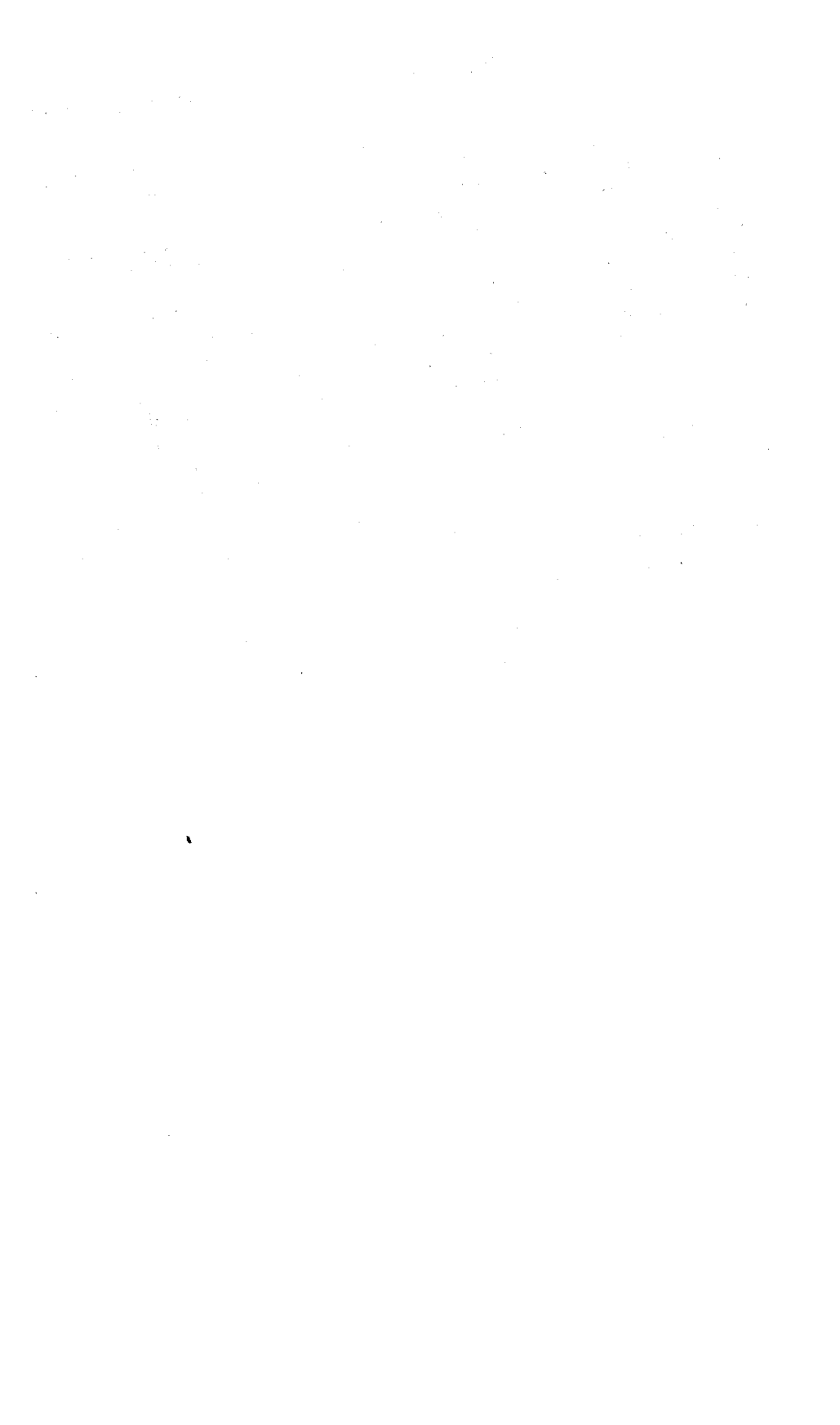
In each regular session in an even-numbered year, at such time as may be prescribed by law, the governor may submit to the legislature a bill to amend any appropriation for operating expenditures of the current fiscal biennium, to be known as the supplemental appropriations bill, and bills to amend any appropriations for capital expenditures of the current fiscal biennium, and at the same time he shall submit a bill or bills to provide for any added revenues or borrowings that such amendments may require. In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act or bond authorization act of the current fiscal biennium or prior fiscal periods. In any such session in which the legislature submits to the governor a supplemental appropriations bill, no other appropriation bill, except bills recommended by the governor for immediate passage, or to cover the expenses of the legislature, shall be passed on final reading until such supplemental appropriations bill shall have been transmitted to the governor."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This amendment shall take effect upon compliance with Article XV, section 3, of the Constitution of the State of Hawaii.

(Passed final reading in the Senate on April 5, 1972, and in the House of Representatives on April 11, 1972.)

*Edited accordingly.



TABLES SHOWING EFFECT OF ACTS

GENERAL INDEX

Section No.	Effect	Act No.	Section No.	Effect	Act No.
206-9	Am	2	321-131 to 136	Am	73
231-23	Am	200	321-137	N	73
231-25	Am	83	322-61 to 79 (pt V),	R	100
246-23, 26	Am	200	101 to 110 (pt VI)		
246-28	R	200	328-_____	N	151
246-32	Am	200	328-1, 2	Am	151
246-33.1	Am	78	328-2.1	N	151
246-39, 39.1	Am	200	328-6, 8, 10, 13,	Am	151
248-6	Am	172	15 to 17, 19		
248-8	Am	180	328-19.1	N	151
249-14	Am	25, 116	328-23, 25	Am	151
249-18	Am	25	328-81	R	10
261-7	Am	14	328-82	Am	2
266-17	Am	136, 180	328-82, 83	R	10
266-20	Am	180	328-84	Am	2
267-13	Am	180	328-84 to 89	R	10
267A-_____	N	28	C 329 (new)	N	10
(7 secs.)			(35 secs.)		
269-2, 3	Am	118	329-1, 2	R	10
275-_____	N	156	329-3	R	10
275-1 to 5	R	9	329-4	Am	2
275-8	R	9	329-4, 5	R	10
			329-6 to 13	R	10
			329-14	Ren	10
			329-15 to 21	R	10
			329-22	Ren	10
			329-23 to 32	R	10
			333-35	Am	2
			334-6	Am	80
			334-75	Am	141
			338-_____	N	66
			(2 secs.)		
			338-15, 16, 41, 42	Am	66
			338-43	R	66
			338-44	Ren	66
			C 340	R	100
			346-29, 37	Am	32
			346-81 to 85 (pt IV)	N	198
			347-_____	N	75
			347-13	Am	75
			351-_____	N	61
			351-2	Am	2, 61
			351-17, 31, 61, 63	Am	61
			353-25	Am	153
			353-27	Am	174
			353-49	R	9
			354-2	Am	152
			356-39	Ren	170
			359-123, 125	Am	135
			359-127	N	135
			359G-4	Am	2, 178
			359G-5, 7, 9, 10	Am	170
			359G-10.1, 12.1	N	170
			359G-17	Am	2

*Purports to amend; no change.

Section No.	Effect	Act No.	Section No.	Effect	Act No.
536-1	Am	2	603-23	Am	88
551-1, 2	Am	145	603-24 to 28	R	88
551-11	Am	145	603-36, 37	Am	88
551-12	Am	2, 145	603-37.5	N	88
551-13, 17, 27 to 31, 33, 34, 41 to 43, 46 to 48, 51, 53, 55 to 61	Am	145	603-41	Am	88
551-62	Am	21, 145	603-42, 46	R	88
551-63	Am	145	605-1, 2	Am	184
551-74, 76 to 79, 81 to 84, 87, 89 to 91	Am	145	605-3, 4	R	184
552-2	Am	145	605-6 to 8	Am	184
554-1 to 3, 7	Am	145	605-9, 10	R	184
571-2, 11, 13, 22, 31	Am	2	605-11	Am	184
571-45	Am	115	605-12	R	184
572-1	Am	182, 192	605-13	Am	184, 190
572-2	Am	2, 192	605-15, 17	Am	184
572-9	Am	2	606-1 to 4	Am	88
573-7	Am	191	606-5	Am	139
575-1	R	9	606-6, 7	R	88
577-1	Am	2	606-8 to 14	Am	88
577-3	Am	144	606-15	R	88
577-8, 12	R	9	607-2, 3	Am	88
577A-1	Am	2	607-3.5	N	88
579-4	Am	2	607-4 to 9	Am	88
580-41	Am	11	607-10, 11	R	88
580-42	R	11	607-12 to 14	Am	88
580-42	N	11	607-15	R	88
580-43	R	11	607-16, 17, 21	Am	88
580-45	Am	11	607-22	R	88
580-48	R	11	607-23, 24	Am	88
580-49	Am	11	608-1, 2	Am	88
580-50, 53, 54	R	11	621-1	Am	104
601-2, 7, 9	Am	88	621-2, 3	R	104
601-10 to 12	R	88	621-4, 5	Am	104
601-13 to 15	Am	88	621-6	R	104
601-16	R	88	621-7, 8	Am	104
602-3, 5	Am	88	621-12 to 14, 16 to 18, 20	Am	104
602-6	R	88	621-20.5	N	104
602-7 to 9	Am	88	621-21, 22, 25, 26	Am	104
602-10	R	88	621-27	R	104
602-11	Am	88	622-1 to 5, 11 to 16, 18, 20 to 23, 42	Am	104
602-12, 13, 16	R	88	622-44, 45	R	104
602-21	Am	88	622-51 to 53, 56	Am	104
602-22 to 24, 31 to 34, 36, 37	R	88	624-1, 2, 11 to 19, 21 to 23	R	143
603-3, 4	Am	88	624-24, 24.5, 25, 25.5	N	143
603-7	R	88	624-26	R	143
603-11, 12	Am	88	624-27, 28	Am	143
603-13	R	88	624-31 to 34	R	143
603-14 to 16	Am	88	624-35, 41	Am	143
603-17, 21	R	88	624-42 to 44	R	143
603-21.5 to 21.9	N	88	624-45	Am	143
603-22	R	88	625-1 to 14	R	143
			625-15	Ren	143

Section No.	Effect	Act No.	Section No.	Effect	Act No.
C 631	R	89	641-41	Am	89
632-1, 2, 3	Am	89	641-42	R	89
632-4, 5	R	89	641-43	Am	89
633-27, 28	Am	142	641-44	R	89
634-1 to 20, 26, 27	R	89	641-45	Am	89
634-31	Am	89	641-46	R	89
634-32	R	89	C 642	R	89
634-33, 34	Am	89	651-65	Am	194
634-41 to 48, 51	R	89	654-1 to 14	R	90
634-56	Am	89	654-21, 22	Am	90
634-57	R	89	654-23	R	90
634-58 to 60	Am	89	654-24 to 26, 29, 30	Am	90
634-60.5	N	89	655-1, 3	Am	89
634-61, 62	R	89	655-4, 5	R	89
634-63	Am	89	657-1, 2	Am	105
634-64, 65	R	89	657-3	Am	186
634-66, 67, 69, 70, 71	Am	89	657-3.5	N	105
634-72	N	89	657-5, 7	Am	105
634-76	Am	89	657-7.5	N	186
634-81	R	89	657-8	Am	133
634-82	Am	89	657-11	Am	105
634-83 to 86	R	89	657-12	R	105
634-91 to 98	R	89	657-13	Am	2
635-1, 2	R	89	657-14, 16 to 22	Am	105
635-3	Am	89	657-34	Am	2, 105
635-4, 11	R	89	657-35	Am	105
635-12 to 15	Am	89	657-37	R	105
635-16, 18, 19	R	89	658-1, 3, 5, 6, 8, 11 to 14	Am	90
635-26 to 30	Am	89	659-1 to 9, 16 to 24, 31 to 40	R	90
635-31	R	89	659-46, 47	Am	90
635-32	Am	89	659-47.5	N	90
635-41 to 44, 51	R	89	659-48, 49	Am	90
635-52	Am	89	659-50	R	90
635-57	R	89	659-51 to 53	Am	90
636-1, 2	R	89	659-55	N	90
636-3, 4	Am	89	660-1, 2	R	90
636-5	N	89	660-3 to 7	Am	90
636-11 to 14	R	89	660-8, 10, 11	R	90
636-15	N	89	660-12, 13, 15 to 18, 20, 21, 24, 25, 28, 30 to 32	Am	90
C 637	R	89	661-1 to 6, 9 to 11	Am	164
641-1	R	89	662-2, 6, 9, 14, 15	Am	164
641-2	Am	89	663-1	Am	144, 189
641-3	R	89	663-2, 3, 5 to 7, 12, 17, 31	Am	144
641-4, 5, 11	Am	89	664-1, 7, 9, 10, 21 to 26, 31 to 36	Am	90
641-11.5	N	89	664-37	R	90
641-12	Am	89, 148	665-1, 5	Am	90
641-13 to 15	R	89	666-1, 5 to 8	Am	90
641-16	Am	89	666-10	R	90
641-17	R	89			
641-18	Am	89			
641-19 to 23	R	89			
641-24, 31	Am	89			
641-32 to 36	R	89			

Section No.	Effect	Act No.	Section No.	Effect	Act No.
666-11, 14	Am	90	711-85, 91 to 94	R	9
666-15 to 19	R	90	711-96	Am	109
666-41 to 45 (pt II)	R	132		Ren	9
667-1 to 6, 8 to 10	Am	90	C 712	R	9
667-11 to 13	R	90	C 713	Ren	9
668-1 to 5	Am	90	C 713C	Ren	9
668-6	R	90	C 714	Ren	9
668-7, 8	Am	90	C 715	Ren	9
668-8.5	N	90	C 716	Ren	9
668-9, 12 to 14, 16, 17	Am	90	C 718	Ren	9
669-1 to 3	Am	90	C 719	Ren	9
669-3.5	N	90	C 721	R	9
669-4, 5, 7	R	90	C 722	R	9
669-8	Am	90	C 723	R	9
C 701	R	9	C 724	R	9
C 702	R	9	C 725	R	9
C 703	R	9	C 726	R	9
C 704	R	9	727-1 to 24	R	9
705-1 to 3	R	9	727-25	Ren	9
705-4, 5	Ren	9	728-1 to 7	R	9
705-5.5	R	9	728-9, 10	R	9
705-6 to 8	Ren	9	C 729	R	9
705C-1	Am	44	C 730	Ren	9
705C-1 to 3	Ren	9	C 731	R	9
705C-3, 4	Am	44	732-1	Ren	9
705C-4 to 6	Ren	9	C 733	R	9
705C-7	Am	44	734-1, 2	Ren	9
705C-7 to 11	Ren	9	734-3	R	9
705C-12	Am	44	C 735	R	9
	Ren	9	C 736	R	9
C 706	R	9	C 738	R	9
C 707	R	9	C 739	R	9
708-1 to 11, 21 to 24, 31 to 38	Ren	9	C 740	R	9
709-1 to 3	Ren	9	C 741	R	9
709-4	Am	109	C 742	R	9
	Ren	9	C 743	R	9
709-5 to 19, 31 to 41	Ren	9	C 744	R	9
709-51	Am	109	C 745	R	9
	Ren	9	C 746	R	9
710-1 to 11	Ren	9	747-1 to 16	R	9
710-12 to 14	R	9	747-17	Am	109
710-15	Ren	9		Ren	9
711-1, 6 to 10, 16 to 18, 21 to 23, 26 to 42, 46 to 51, 56, 61 to 64	Ren	9	747-18 to 25	R	9
711-65, 66	R	9	C 748	R	9
711-67, 68	Ren	9	C 749	R	9
711-71 to 73, 76, 77	R	9	C 750	R	9
711-78, 79	Ren	9	C 751	R	9
711-80 to 83	R	9	C 752	R	9
711-84	Ren	9	C 753	R	9
			C 754	Ren	9
			C 755	R	9
			C 756	R	9
			C 757	Ren	9
			C 758	R	9

Section No.	Effect	Act No.	Section No.	Effect	Act No.
C 759	R	9	C 767	R	9
C 760	Ren	9	C 768	R	9
C 761	R	9	769-1	Ren	9
C 762	R	9	C 770	R	9
C 763	R	9	C 771	R	9
C 764	R	9	C 772	R	9
C 765	R	9	C 773	Ren	9
C 766	R	9	C 774	Ren	9

B. SESSION LAWS OF HAWAII AFFECTED

S.L. No.	Effect	Act No.	S.L. No.	Effect	Act No.
Laws 1945			Laws 1968		
Act 87	Am	74	Acts 2, 31, 40	Am	74
Laws 1949			Laws 1969		
Act 274	Am	74	Acts 2, 115	Am	74
Laws 1949, Special			Act 155	Am	74, 146
Act 21	Am	74	Act 279	Am	74
Laws 1951			Laws 1970		
Act 300	Am	74	Act 3	Am	74
Laws 1957			Act 127	Am	65
Act 234	Am	74	Act 153	Am	74
Laws 1961			Act 187	Am	74, 146
Acts 193, 194, 195	Am	74	Act 191	Am	74
Laws 1962			Laws 1971		
Act 30	Am	74	Act 1	Am	74
Laws 1963			Act 68	Am	50, 146, 202
Acts 186, 201	Am	74	Act 80	Am	92
Laws 1964			Act 146	Am	165
Act 52	Am	74	Act 188	Am	53
Laws 1965			Act 197	Am	202, 204
Acts 123, 195, 197, 203, 216	Am	74	Act 201	Am	74
Laws 1966			Act 210	Am	117
Act 38	Am	74	Laws 1972		
Laws 1967			Act 9	Am	102
Acts 132, 133, 198, 217, 263, 278	Am	74	Act 10	Am	114

C. SECTIONS OF HAWAIIAN HOMES COMMISSION ACT 1920 AFFECTED

Section No.	Effect	Act No.	Section No.	Effect	Act No.
213	Am	76	215	Am	76
214	Am	76	222	Am	173

D. PENAL CODE

Section No.	Effect	Act No.
830	N Am	9 102

E. STATE CONSTITUTION

Section No.	Effect	Act No.
Art I §	N	SB 1408-72

Section No.	Effect	Act No.
Art VI §5	Am	SB 1947-72

GENERAL INDEX	ACT	PAGE
ACCOUNTING AND GENERAL SERVICES		
Destruction of papers	5	29
General improvements		
Hawaii	176	586
Honolulu	176	576
Kauai	176	590
Maui	176	582
Gubernatorial transition	126	439
Programs		
corrections	202	632
economic development	202	625
education	202	626
government direction and support	202	628
transportation	202	633
ACTIONS		
<i>Statutory Revision (this index)</i>		
ADDITIONAL UNEMPLOYMENT COMPENSATION		
Authorization and payment of benefits	47	228
ADMINISTRATIVE PROCEDURE		
Civil defense and emergency, rules and regulations exemption	46	227
Hearings, publication of notice in county	188	607
Land use law	187	606
ADOPTION		
Decrees, free copies for veterans	139	484
AGE		
Lowering the age of majority	2	2
Marriage	192	609
AGED PERSONS		
Commission on aging	202	632
Day care centers	198	614
Housing, Hawaii	176	586
Rent supplements	135	474
Senior citizen centers		
programs	202	630
Honolulu	176	576
Kauai	176	590
AGRICULTURAL COOPERATIVE ASSOCIATIONS		
General amendments	103	397
AGRICULTURE		
Animal disease control and quarantine, enforcement	86	320
Capital improvements	202	465
Director, pest control board	134	466
<i>Eggs (this index)</i>		
<i>Farm Loans (this index)</i>		

	ACT	PAGE
General improvements		
Hawaii	176	583
Honolulu	176	569
Land acquisition by State for agricultural development	110	418
Marketing		
agreements and orders	155	518
inspection revolving fund	41	217
Milk control	40	213
Pesticides, sale and use	58	256
Programs, economic development	202	625
Regulation of farm produce business	39	210
AIRPORTS		
Capital improvements	202	640
Flight schools, rental of facilities	14	171
General improvements, Kauai	176	589
Programs	202	633
ALCOHOLICS		
Education and rehabilitation projects	65	275
ANIMALS		
Disease control and quarantine, enforcement	86	320
Dogs accompanying blind persons	75	295
Game mammals, hunting restrictions	112	420
Indigenous, conservation program	49	232
ANTITRUST		
Newspapers, exemption	205	647
APPRENTICESHIP		
Elevator mechanics	124	436
Prohibition against discrimination	64	274
APPROPRIATIONS		
Capital improvements, supplement	202	634
Claims against the State	203	643
College and university student leaders conference	169	555
Criminal injuries compensation		
emergency payment fund	61	270
payments to certain persons	82	311
Farm loans	87, 183	321, 602
General Improvements Act of 1972 (see also specific programs)	176	568
Higher education loan fund	34	203
Kamehameha Day celebration commission	50	235
Lapsing of funds	74	293
Law school	165	550
Legislative auditor	1	2
Legislature	1	1
Medical school	92	373
Model cities study	130	444
North Kohala development	197	613
Ombudsman	1	2

	ACT	PAGE
Programs	202	624
Sand Island, park	68	279
Social services, work incentive program units	99	380
Supplemental Appropriations Act of 1972 (see also specific program)	202	624
Supplemental appropriations bill, constitutional amendment	SB 1947-72	650
University of Hawaii certain capital improvement projects	146	493
Hilo	117	429
Waikiki improvements	204	646
ARCHITECTS		
License qualifications	56	242
ARCHIVES		
Studies by state and county agencies, information and filing requirements	193	610
ATTACHMENT		
Property exemption from levy and sale	194	611
ATTORNEY GENERAL		
Organized criminal activity, actions against	71	282
Power to conduct investigations	33	203
ATTORNEYS		
Law school	165	550
Practitioner without license, district court	190	608
Public utilities commission, staff	118	430
Revision of statutes pertaining to	184	603
Subsidies	202	629
BANKS		
Loan repayment period	127	441
Loans to personnel, maximum amount	98	379
Merger, distribution of cash or property	119	431
BICYCLES		
Records and registration; bikeway construction	25	193
Tax on December purchases	116	428
BIDS AND BIDDING		
Alteration of buildings, exception	7	31
BIRDS		
Indigenous, conservation program	49	232
Propagation of wild birds	15	172
BIRTHS		
Registration procedure	66	276

	ACT	PAGE
BLIND PERSONS		
Rights and privileges	75	295
BOARDS AND COMMISSIONS		
Bicentennial International Marine Exposition Commission	131	445
College and University Student Leaders Conference Committee	169	554
Drug Abuse and Controlled Substances Advisory Commission	114	426
Interdepartmental Transportation Control Commission	59	268
Legislative Scientific Advisory Committee	168	553
Pest Control Board	134	466
Pesticides Advisory Committee	58	267
Population Dispersion and Growth	202	629
Public Broadcasting Authority	199	615
Transportation Modes	202	629
Urban Quality Growth	202	629
Women, Commission on Status of	81, 162	310, 538
BOATS AND VESSELS		
Abandoned, disposition	28	195
Boating special fund	180	599
BONDS		
Destruction of	5	29
Interest rate, temporary increase	8	32
Lost or stolen, duplicate issue	12	167
Payment on defaced coupons	12	168
Supplemental Appropriations Act	202	642
BUDGET AND FINANCE		
Aging, Commission on	202	632
<i>Bonds</i> (this index)		
Culture and the arts	202	628
Destruction of papers	5	29
Director of finance, responsibility for treasury	6	30
Gubernatorial transition	126	440
State budget, reports and summaries	72	287
CAPITAL IMPROVEMENTS		
Alterations of buildings, expenditures	7	31
Appropriations	202	634
Budget preparation	72	287
Veterans' rights	94	375
CHICKEN EGGS		
Inspection fees	67	278
Methods of determining quality	147	496
CHILDREN		
Age of majority	2	2
Descendents' estates, appointment of parents as administrators	19	188

	ACT	PAGE
Guardianship, termination upon marriage of minor	21	190
Marriage, age and consent requirements	192	609
CIVIL DEFENSE		
<i>Defense</i> (this index)		
CIVIL PROCEDURE		
<i>Statutory Revision</i> (this index)		
CIVIL SERVICE		
Educational assistants and aides, permanent rights and privileges	202	642
<i>Public Employment</i> (this index)		
CLAIMS AGAINST THE STATE		
Appropriations	203	643
COMMUNITY COLLEGES		
Capital improvements	202	637
College and university student leaders conference	169	554
General improvements		
Honolulu	176	570
Maui	176	581
Programs	202	627
CONDEMNATION		
Land for agricultural development	110	418
Personal property	84	318
CONSTITUTION, STATE		
Equality of rights	SB 1408-72	650
Supplemental appropriation bill	SB 1947-72	650
CONSUMER PROTECTION		
Residential landlord-tenant code	132	446
CONTRACTORS		
Limitation of actions against	133	464
CONTROLLED SUBSTANCES, UNIFORM ACT		
Adoption	10	142
Amendments	114	423
CONVEYANCES		
Recording procedure, statutory revision	125	437
CORPORATIONS		
Organized crime, forfeiture of charter	71	282
Professional medical corporations, stockholders	181	601

	ACT	PAGE
CORRECTIONS		
Capital improvements	202	639
Compensation for labor by prisoners	153	517
Custody of money of prisoners	174	567
Industrial enterprises, wages	152	516
Programs	202	632
COUNTERCLAIMS		
Limitation of actions	186	605
COUNTIES		
Alteration of buildings, expenditures	7	31
Employees health fund contributions	101	393
Firearms, dealers' licenses	30	198
General improvements (see also specific county or program)	176	568
Improvement districts, state highways	201	622
Studies, filing of copies	193	610
Tax collections distribution	172	564
COURTS		
<i>District Courts</i> (this index)		
<i>Statutory Revision</i> (this index)		
CRIMINAL INJURIES COMPENSATION		
Appropriations	82	311
Modification of program	61	270
CRIMINAL LAW		
Appeals by State	148	497
Organized crime, actions against	71	280
<i>Penal Code</i> (this index)		
Services for indigent defendants	44	224
CRIMINAL PROCEDURE		
Statutory revision	109	416
DAY CARE SERVICES		
Establishment	198	614
Programs	202	631
DEATHS		
Cemeteries for veterans	94	375
Registration procedure	66	277
DECEDENTS' ESTATES		
Appointment of parents as administrators	19	188
Revised uniform estate tax apportionment act	138	480
Small estates, allowance for surviving spouse	20	189
Statutory revision	108	414

	ACT	PAGE
DEFENSE		
Civil defense and emergency, rules and regulations	46	227
General improvements		
Honolulu	176	580
Kauai	176	591
DENTISTRY		
License requirements	55	242
Public employee benefit plan, foster child coverage	35	204
DISABILITIES		
Age	2	27
Rent supplements for disabled persons	135	474
DISCRIMINATION		
Apprenticeships	64	274
Equality of rights, proposed constitutional amendment	SB 1408-72	650
DISTRICT COURTS		
Landlord-tenant disagreement, jurisdiction and practice	142	485
Practitioner without license	190	608
DIVORCE		
Child custody, social study	115	427
Decrees, free copies for veterans	139	484
Findings for decree (no fault)	11	165
Registration of certificates	66	277
DRUGS		
Education and rehabilitation projects, "alcohol" defined	65	275
Uniform Controlled Substances Act		
adoption	10	142
amendments	114	423
Waikiki Drug Clinic	202	630
ECOLOGY, ENVIRONMENT AND RECREATION		
Capital improvements	202	634
Environmental quality control, comprehensive act	100	381
Interdepartmental transportation control commission	59	268
<i>Land and Natural Resources (this index)</i>		
Programs	202	624
Quality growth policy	45	226
ECONOMIC DEVELOPMENT		
Agricultural marketing agreements	155	518
Bicentennial international marine exposition commission	131	445
Capital improvements	202	635
Interdepartmental transportation control commission	59	268
North Kohala programs	197	613
Programs, generally	202	625

	ACT	PAGE
EDUCATION		
Capital improvements	202	636
College and university student leaders conference	169	554
Community-school activities, after-school and weekend programs	128	441
General improvements		
Hawaii	176	585
Honolulu	176	570
Kauai	176	590
Maui	176	581
Personnel, assistants and aides, civil service status	202	642
Programs	202	626
<i>Schools</i> (this index)		
Secondary school students conference	160	536
Superintendent, public broadcasting authority member	199	616
<i>University of Hawaii</i> (this index)		
EGGS		
Inspection fees	67	278
Methods of determining quality	147	496
ELECTIONS		
Physically disabled voter	158	534
Technical amendments	77	304
ELECTRICIANS AND PLUMBERS		
Licensing requirements and exemptions	196	612
ELEVATORS		
Access to firemen	24	192
Mechanics, licensing and temporary permits	124	436
EMPLOYMENT		
<i>Labor and Industrial Relations</i> (this index)		
EMPLOYMENT SECURITY		
Additional unemployment compensation, authorization and payment of benefits	47	228
Benefits, prompt payment	4	29
Number of referees to hear appeals	157	533
ETHICS		
State legislators and employees	163	539
EVIDENCE		
Statutory revision	104	402
EXPLOSIVES		
Occupational safety and health regulations	57	253
		669

	ACT	PAGE
FALSE ADVERTISING		
Actions, statutory revision	109	417
FAMILY COURTS		
<i>Divorce</i> (this index)		
FARM LOANS		
Appropriation	183	602
New farmer program	87	321
FARM PRODUCE		
Business regulations	39	210
FIREARMS		
Exemption from registration	166	551
License to sell or manufacture	30	198
FIREMEN		
Access to buildings with automatic elevators	24	192
FISH AND GAME		
General improvements		
Kauai	176	588
Statewide	176	569
Hunting of game mammals	112	420
Volunteer deputy wardens, workmen's compensation coverage	54	241
FLOOD PREVENTION AND CONTROL		
Capital improvements	202	634
General improvements, Honolulu	176	577
Programs	202	624
FOOD, DRUGS AND COSMETICS		
General amendments to conform to federal law	151	499
FORESTS		
Conservation zones, permitted use for utility and other purposes	185	604
Surrender of private lands, improvements and crops	97	378
FUMIGATORS		
Licensing	134	465
Regulation program	202	632
GENERAL EXCISE TAX		
Collections, distribution to counties	172	564
Failure to pay, penalty	71	287
GLAZING MATERIALS		
Safety requirements and restrictions	73	292

	ACT	PAGE
GOVERNMENT DIRECTION AND SUPPORT		
Capital improvements	202	638
Programs	202	628
GOVERNOR		
<i>Boards and Commissions (this index)</i>		
Law school, approval of positions	165	550
Medical school, approval of positions	92	373
Model cities study	130	444
Programs		
executive direction and support	202	629
youth opportunity	202	631
Quality growth policy	45	226
Transition of office, assistance to governor-elect	126	438
Waikiki improvements	204	646
GUARDIAN AND WARD		
Statutory revision	145	491
Termination upon marriage of minor	21	190
HARBORS		
Boating special fund	180	599
Capital improvements	202	640
General improvements		
Hawaii	176	584
Kauai	176	589
Maui	176	581
Programs	202	633
Rates for facilities and services	136	475
HAWAII COUNTY		
(see also COUNTIES)		
General improvements	176	586
North Kohala development and planning	197	613
HAWAIIAN HOME LANDS		
Capital improvements	202	639
General improvements		
Hawaii	176	585
Honolulu	176	575
Maui	176	582
Loan funds	76	296
Programs	202	631
Subleases, report to legislature	173	566
HEALTH		
Director, pest control board	134	466
General improvements		
Hawaii	176	586
Honolulu	176	575
Kauai	176	590
Maui	176	582
Interdepartmental transportation control commission	59	268

	ACT	PAGE
Occupational safety and health law	57	245
Personnel, political activity	29	198
Pesticides advisory committee	58	268
Programs		
generally	202	630
pollution prevention and control	202	624
Uniform Controlled Substances Act		
adoption	10	142
amendments	114	423
Vital statistics	66	277

HEARINGS

Administrative Procedure (this index)

HIGHWAYS

Bikeways, use of highway fund for	25	193
Capital improvements	202	641
County improvement districts for state highways	201	622
General improvements		
Hawaii	176	583
Honolulu	176	569, 579
Kauai	176	589
Maui	176	581, 583
Programs	202	633

HONOLULU

(see also COUNTIES)

General improvements	176	577
Stadium	202	639
Waikiki improvements	204	646

HORIZONTAL PROPERTY REGIMES

Common elements and land, interests and conveyances relating to	16	173
--	----	-----

HOSPITALS

General improvements		
Hawaii	176	586
Honolulu	176	576
Kauai	176	590
Maui	176	582
Psychiatric facilities, authorized absence	141	485
Subsidies	202	630
<i>Workmen's Compensation (this index)</i>		

HOUSING

Development program, technical amendments	170	555
Development projects, exemption from zoning and construction standards	178	597
General improvements		
Hawaii	176	586
Honolulu	176	576
Motor vehicles, restricted use	48	231

	ACT	PAGE
Programs	202	631
Rent supplements, persons qualified for	135	474
HUMAN RESOURCES		
Programs	202	630
HUMAN RIGHTS AND JUSTICE		
Capital improvements	202	639
Programs	202	632
IMPROVEMENT DISTRICTS		
Highways, initiation by State	201	622
Waikiki	204	646
INCOME TAX		
Failure to report income, penalty	71	287
INDUSTRIAL LOAN COMPANIES		
Investment certificates, exempt from registration	111	419
Loan fees or points	31	199
Loan repayment period	127	441
Outstanding investment certificates and debentures	113	421
INSANITY		
Divorce, support of defendant	11	166
INSURANCE		
Automobile	202	632
Motor vehicles, mass merchandising	137	476
Temporary disability, denial of benefits	120	432
Unfair claim settlement practices	140	484
INTERNATIONAL MARINE EXPOSITION		
Generally	131	445
INTOXICATING LIQUORS		
Education and rehabilitation projects	65	275
General amendments	177	593
Licenses		
change without public hearing	149	497
transfer restriction	96	377
Wine		
home manufacture	95	376
sale of	154	518
INVESTMENT SECURITIES		
Clearing corporations	93	374
JUDICIARY		
<i>Statutory Revision (this index)</i>		

	ACT	PAGE
JURY		
Wage payments by employer, provisions repealed	27	195
KAMEHAMEHA DAY CELEBRATION COMMISSION		
Fund and donations	50	235
KAUAI		
(see also COUNTIES)		
General improvements	176	590
LABOR AND INDUSTRIAL RELATIONS		
<i>Apprenticeship</i> (this index)		
Occupational safety and health law	57	245
Programs		
day care services	202	631
manpower development	202	630
<i>Wages</i> (this index)		
<i>Workmen's Compensation</i> (this index)		
LAND AND NATURAL RESOURCES		
Birds and mammals, conservation of indigenous species	49	232
Chairman, Bicentennial international marine exposition member	131	446
General improvements		
Hawaii	176	583
Honolulu	176	569
Kauai	176	588
Maui	176	581
Land use law	187	606
Pesticides advisory committee	58	268
Programs		
ecology, environment and recreation	202	624
water and land development	202	626
wild birds, propagation of	15	172
LAND COURT		
Statutory revision	91	368
LAND DEVELOPMENT		
<i>Water and Land Development</i> (this index)		
LAND USE LAW		
District boundary change	187	606
LANDLORD AND TENANT		
Residential landlord-tenant code, rights and obligations	132	446
Security deposit, district court jurisdiction and practice	142	485
LAW SCHOOL		
Appropriation	165	550

	ACT	PAGE
LEGISLATIVE AUDITOR		
Appropriation	1	2
Legislative scientific advisory committee, names for	168	553
Studies by state and county agencies, filing of copies with	193	611
LEGISLATIVE REFERENCE BUREAU		
Legislative scientific advisory committee, names for	168	553
Studies by state and county agencies, filing of copies with	193	611
Transfer and reorganization	171	560
LEGISLATURE		
Appropriation	1	1
Controlled substances, authority over	10	146
Legislative reference bureau, appointment of director	171	561
Reapportionment commission	202	629
Scientific advisory committee	168	553
Standards of conduct	163	539
Support programs	202	629
LIENS		
Personal property, sale of	85	319
Statutory revision	106	410
LIEUTENANT GOVERNOR		
Programs	202	629
LIMITATION OF ACTIONS		
Age disability	2	27
Counterclaims and third party defendants	186	605
Damages against contractors	133	464
Statutory revision	105	408
LOYALTY		
Statements from public employees, repealed	26	195
MAMMALS		
Indigenous, conservation program	49	232
MANPOWER DEVELOPMENT AND TRAINING		
Employment for public assistance recipients	53	239
MARKETING		
<i>Agriculture (this index)</i>		
MARRIAGE		
Age and consent requirements	192	609
Divorce decree, findings for	11	165
Minor, termination of guardianship	21	190
Place of ceremony	182	601
Registration	66	277
		675

	ACT	PAGE
MAUI		
(see also COUNTIES)		
General improvements	176	582
Programs, recreation	202	625
MEDICAL SCHOOL		
Appropriation	92	373
Capital improvements	202	637
MENTAL HEALTH		
Outpatient clinic, charges and collections	80	309
Programs	202	630
MILK CONTROL		
Minimum prices and compensatory payments	40	213
MINORS		
<i>Children (this index)</i>		
MODEL CITIES		
Study	130	443
MOTOR VEHICLE INDUSTRY		
Price restrictions removed	195	612
MOTOR VEHICLES		
Certificates of registration, where to keep	159	535
Dwelling use restrictions	48	231
Forfeiture to county, illegal vehicles and parts	69	279
Highway beautification and disposal of abandoned vehicles revolving fund	161	537
Interdepartmental transportation control commission	59	268
Mass merchandising of insurance for	137	476
Operation without certificate of inspection	18	188
NARCOTICS		
Uniform Controlled Substances Act		
adoption	10	142
amendments	114	423
NEWSPAPERS		
Antitrust exemption	205	647
NORTH KOHALA		
Development and planning	197	613
NOTICE		
Public hearing, publication in county	188	607

	ACT	PAGE
NURSERY SCHOOLS		
Appropriation	202	631
NURSES		
Examination for license in a sister state, proctoring fee	43	223
OAHU		
<i>Honolulu</i> (this index)		
OCCUPATIONAL SAFETY AND HEALTH		
Generally	57	245
OMBUDSMAN		
Appropriation	1	2
Legislative scientific advisory committee, names for	168	553
OPTOMETRY		
License to practice, continuing education requirement	123	435
ORGANIZED CRIME		
Actions against	71	280
PARKS		
Capital improvements	202	634
General improvements		
Hawaii	176	583, 587
Honolulu	176	569, 577
Kauai	176	589, 590
Maui	176	581, 583
Programs	202	625
Sand Island	68	279
PARTNERSHIPS		
Enjoining for organized crime	71	282
Rental management contracts, securities exemption	150	498
Uniform Partnership Act, adopted	17	174
PENAL CODE		
Adoption	9	32
Amendments	102	396
Printing appropriation	202	630
PERSONAL PROPERTY		
Acquisition for public use	84	318
Sale by lien holder	85	319
PEST CONTROL OPERATORS		
Licensing	134	465

	ACT	PAGE
PESTICIDES		
Sale and use	58	256
PHARMACY		
Temporary license requirements	62	273
PHYSICIANS AND SURGEONS		
License to practice, residence requirement	167	551
Workmen's compensation reports		
delinquent fine	60	269
information to employee	13	169
POISONS		
Pesticides, sale and use	58	256
POLICE		
Inspection of tax records	71	287
POLITICS		
Health Department personnel, restrictions repealed	29	198
POLLUTION PREVENTION AND CONTROL		
Programs	202	624
POPULATION		
Dispersion and growth policy	202	629
PRISONERS AND CONVICTS		
<i>Corrections (this index)</i>		
PROBATE		
<i>Decedents' Estates (this index)</i>		
PROCEDURE		
<i>Statutory Revision (this index)</i>		
PROFESSIONAL CORPORATIONS		
Medical, psychologists as stockholders	181	601
PROGRESSIVE NEIGHBORHOODS PROGRAM		
Model cities study	130	443
PROPERTY		
Acquisition of private personal property for public use	84	318
Exemption from levy and sale on execution	194	611
Forest reserves		
land and landowner defined	185	604
surrendered lands	97	378
Horizontal property regimes, common elements and land interests	16	173

	ACT	PAGE
<i>Landlord and Tenant</i> (this index)		
Land use law, district boundary change	187	606
Out-of-state subdivisions, inspection	79	309
Proceedings, statutory revision	107	412
<i>Real Property Tax</i> (this index)		
Tax levy upon	83	315
PSYCHIATRIC FACILITIES		
Authorized absence	141	485
PSYCHOLOGISTS		
Medical corporations, stockholders	181	601
PUBLIC CONTRACTS		
Alteration of buildings, exception	7	31
PUBLIC DEFENDER		
Duties and services	44	224
PUBLIC EMPLOYMENT		
Educational officers and aides, permanent rights	202	642
Health Department, political activity	29	198
Health fund		
benefits extended to foster child	35	204
contributions	101	393
Personal history statements, repealed	26	195
<i>Retirement System</i> (this index)		
Standards of conduct	163	539
PUBLIC LANDS		
Acquisition of land for disposition for agricultural purposes	110	418
Exchange for private land, value conditions	175	567
Residential lots, building requirements	37	209
Sale of land acquired for highway purposes not subject to		
legislative approval	38	210
Subleases, report to legislature	173	566
PUBLIC SAFETY		
Firearms exempt from registration	166	551
Firemen, access to buildings with automatic elevators	24	192
PUBLIC SERVICE COMPANY TAX		
Collections, distribution to counties	172	564
PUBLIC UTILITIES		
Programs	202	632
Use of forestry and water reserve zones	185	604
PUBLIC UTILITIES COMMISSION		
Compensation and staff attorney	118	430

	ACT	PAGE
QUARANTINE		
Enforcement	86	320
RADIO		
Public broadcasting authority	199	615
REAL ESTATE		
Out-of-state subdivisions, inspection	79	309
REAL ESTATE BROKERS AND SALESMEN		
Commission, program	202	632
Fraud and deceit by, recovery fund	51	236
REAL PROPERTY TAX		
Exemptions		
claims for	200	619
crop shelter	78	308
REAPPORTIONMENT		
Legislature, commission and advisory council	202	629
REGULATORY AGENCIES		
Programs	202	632
RESIDENCE		
Physicians, license requirement	167	551
RESIDENTIAL LANDLORD-TENANT CODE		
Generally	132	446
RETIREMENT SYSTEM		
Benefits upon death of retirant	22	190
Membership credit for certain employees	23	192
Prior service repurchase, options	129	442
Regular interest rate	36	206
REVISOR OF STATUTES		
Transferred for administrative purposes	171	560
SAFETY		
Occupational safety and health law	57	245
SAND ISLAND		
Park, appropriation	68	279
SAVINGS AND LOAN ASSOCIATIONS		
Home loans, maximum amount	70	280

	ACT	PAGE
SCHOOLS		
Capital improvements	202	636
Community activities, after school and weekend programs	128	441
<i>Education</i> (this index)		
General improvements		
Hawaii	176	585
Honolulu	176	570
Kauai	176	590
Maui	176	581
Programs	202	626
Secondary school students conference	160	536
SECURITIES		
Clearing corporations	93	374
Exemption transactions, rental management contract	150	498
SEWERAGE SYSTEMS		
General improvements		
Hawaii	176	586
Kauai	176	591
Lanai	176	583
SEX		
Equality of rights, constitutional amendment	SB 1408-72	650
Wages discrimination prohibited	63	274
SMALL CLAIMS		
Landlord-tenant disagreement, jurisdiction and practice	142	486
SOCIAL SERVICES		
<i>Corrections</i> (this index)		
Day care centers for aged persons	198	614
Employment for public assistance recipients	53	239
General improvements		
Hawaii	176	586
Honolulu	176	576
Programs, generally	202	631
Public assistance, State claims against deceased		
recipient's estate	32	202
Work incentive program units	99	380
STADIUM		
Appropriation	202	639
STANDARDS OF CONDUCT		
State legislators and employees	163	539
STATUTORY REVISION		
Actions by and against the State	164	568
Attorneys, practice of law	184	603
Courts, administration and general procedure	88	325

	ACT	PAGE
Criminal procedure	109	416
Decedents' estates	108	414
Depositions and discovery proceedings	143	487
Evidence	104	402
Guardianship and trust proceedings	145	491
Land court proceedings	91	368
Liens	106	410
Limitation of actions	105	408
Penal code, generally	9	32
Pleadings and procedure	89	338
Property proceedings	107	412
Recording of documents	125	437
Remedies, generally	90	351
Tort actions	144	489
STUDIES		
Central repository and filing of copies	193	610
SUBDIVISIONS		
Out-of-state, inspection	79	309
SYMPHONY		
Appropriations	202	628
TAXATION		
Agricultural cooperative associations	103	402
Bicycles		
bikeways	25	195
December purchases	116	428
proof of ownership	25	194
Collection of unpaid taxes	83	315
Collections, distribution to counties	172	564
Failure to report income	71	287
<i>Real Property Tax</i> (this index)		
Records, inspection by police	71	280
Revised uniform estate tax apportionment act	138	480
TAXIS		
Commission	202	632
TELECOMMUNICATIONS		
Devices used to fraudulently obtain service	156	532
TELEVISION		
Capital improvements	202	638
CATV company exemption from electrician and plumber licensing	196	612
General improvements, Kauai	176	591
Programs	202	628
Public broadcasting authority	199	615
TEMPORARY DISABILITY INSURANCE		
Denial of benefits, notice	120	432

	ACT	PAGE
THEATRE		
Appropriations	202	628
THEFT		
Offenses, penal code amendments	102	396
TORTS		
Husband, liability for acts of wife removed	191	609
Spouses, rights and liabilities	189	608
Statutory revision	144	489
TRANSPORTATION		
Abandoned boats and vessels, disposition	28	195
<i>Airports</i> (this index)		
Capital improvements	202	640
Director, Bicentennial international marine exposition commission member	131	446
General improvements		
Hawaii	176	583
Honolulu	176	569
Kauai	176	589
Maui	176	581
<i>Harbors</i> (this index)		
<i>Highways</i> (this index)		
Interdepartmental transportation control commission	59	268
Programs		
generally	202	633
policies	202	629
TREASURY, STATE		
Director of finance, responsibility	6	30
TRUSTS AND TRUSTEES		
Statutory revision	145	491
UNEMPLOYMENT		
<i>Employment Security</i> (this index)		
UNIFORM COMMERCIAL CODE		
Investment securities, clearing corporations	93	374
UNIFORM CONTROLLED SUBSTANCES ACT		
Adoption	10	142
Amendments	114	423
UNIFORM ESTATE TAX APPORTIONMENT ACT		
Generally	138	480
UNIFORM PARTNERSHIP ACT		
Adopted	17	174

UNIFORM SECURITIES ACT

Exempt securities, industrial loan company investment certificates	111	419
Exempt transactions, rental management contract	150	498

UNIVERSITY OF HAWAII

Capital improvements		
certain projects	146	493
generally	202	637
College and university student leaders conference	169	554
Entomology department chairman, pest control board	134	466
General improvements		
Hawaii	176	584
Honolulu	176	570
Kauai	176	589
Maui	176	581
Higher education loan fund	34	203
Hilo, educational resources, reappropriation	117	429
Law school	165	550
Legislative reference bureau, transfer	171	562
Medical school	92	373
Pesticides advisory committee	58	268
President, public broadcasting authority member	199	616
Programs		
adults, research and development	179	598
agriculture	202	625
generally	202	626

URBAN QUALITY

Growth policy	202	629
---------------------	-----	-----

USE TAX

Collections, distribution to counties	172	564
---	-----	-----

VETERANS

Cemeteries	94	375
Free copies of divorce or adoption decrees	139	484

VITAL STATISTICS

Technical amendments	66	276
----------------------------	----	-----

WAGES

Discrimination between sexes prohibited	63	274
Medical expenses, deductions not authorized	121	433
Service on jury or public board, provisions repealed	27	195
Termination of employment	52	239
Tips and gratuities, when included	122	434

WAIKIKI

Drug clinic	202	630
Improvements	204	646

	ACT	PAGE
WARRANTS		
Destruction of	5	29
WATER AND LAND DEVELOPMENT		
Capital improvements	202	635
General improvements		
Hawaii	176	583, 587
Kauai	176	588, 592
Maui	176	582
North Kohala	197	613
Programs	202	626
WEAPONS		
Firearms exempt from registration	166	551
WINE		
Home manufacture	95	376
Sale of	154	518
WOMEN, COMMISSION ON STATUS OF		
Duties	81	310
Membership	162	538
WORKMEN'S COMPENSATION		
Employer, liability for payments and special assessments	42	218
Enforcement of decisions, judgment fine on employer	3	28
Reports by hospitals and physicians		
delinquent fine	60	269
information to employee	13	169
Volunteer deputy fish and game wardens, coverage	54	241
ZONING		
Housing project exemption	178	597
Land use law, district boundary change	187	606